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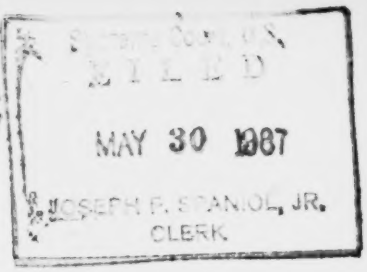

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM 1986

JIMMIE ARNOLD BRUMFIELD II, Petitioner

v

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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HIPP

QUESTIONS PRESENTED

1. Does a Federal Court of Appeals in proceedings arising under 28 U.S.C. 2255 have a duty to determine whether or not Federal Constitutional error involving a denial of rights guaranteed by the Sixth Amendment was harmless beyond a reasonable doubt in order to allow the decision of the lower court committing the Constitutional error to stand?

2. Does a Federal Court of Appeals in proceedings arising under 28 U.S.C. 2255 have a duty to reverse a conviction when the trial court is shown to have been consciously or subconsciously biased against the Defendant before and during the trial of the matter contrary to the due process requirements of the Fifth Amendment of the United States Constitution?

LIST OF PARTIES

The parties to the proceedings are the Petitioner, Jimmie Arnold Brumfield II and the United States of America.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

JIMMIE ARNOLD BRUMFIELD II, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, Jimmie Arnold Brumfield II, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled proceeding on January 6, 1987 (Rehearing denied February 2, 1987).

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is unreported and is

reprinted in the Appendix filed with the court, Page 196.

The Decision of the United States District Court for the Western District of Louisiana, Shreveport Division, has not been reported. The transcript thereof is reprinted in the Appendix filed with the court, Page 1.

JURISDICTION

Invoking Federal jurisdiction under 28 U.S.C. 2255, the petitioner filed a Petition in the Western District of Louisiana, Shreveport Division, seeking relief. On the 6th day of August, 1986, the District Court entered its order dismissing the Petition. See Appendix, Page 166.

On petitioner's Appeal the Fifth Circuit on January 6, 1987 entered a Judgment and an Opinion affirming the District Court orders finding neither clearly erroneously finding of fact or error of law. Petitioner's

Petition For Rehearing was denied February 2, 1987.

On April 20, 1987, Justice Byron R. White ordered that the time for filing this Petition For Writ Of Certiorari be extended to and including June 2, 1987.

The jurisdiction of this court to review the Judgment of the Fifth Circuit is invoked under 28 U.S.C. Section 1254 (1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution, Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any

criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. Constitution, Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

28 U.S.C. 2255. Federal custody; remedies on motion attacking sentence

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the ccurt shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of

law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. (As amended May 24, 1949, c.139, s 114, 63 Stat. 105.)

STATEMENT OF THE CASE

In 1980, petitioner was a practicing lawyer admitted to the Bar of the State of Louisiana. In October of 1980, petitioner traveled to the state of Florida for the

purpose of initiating representation of one Garvin Dale White who was then in Federal custody. While in Florida, petitioner met Randy Costales, a friend or associate of White.

White was transported to Shreveport, Louisiana and incarcerated in the Shreveport jail.

Petitioner returned to the Shreveport area and commenced a series of meetings with Mr. White and Mr. Hawkins, a Senior Agent with the Drug Enforcement Administration, and Agents from other agencies in an effort to negotiate a satisfactory resolution of various charges pending against Mr. White.

These negotiations necessitated a number of meetings with Mr. White in the jail in Shreveport.

Mr. Costales came to the Shreveport area and stayed at the law office of Petitioner. While in Shreveport, Mr. Costales visited Mr.

White in the Shreveport jail on one occasion. He also accompanied Petitioner on a social trip in the family Lincoln Continental which was later to play a part in the escape of Mr. White from the Shreveport jail on November 1, 1980.

Mr. White escaped from the Shreveport jail in the evening of November 1, 1980, shortly after Petitioner was logged into the jail by a Mr. Blake. Present in the same area were two other individuals, Mr. Jenkins and Barbara Dickerson.

Petitioner went to the desk area as Mr. Jenkins started toward the jail cell to get Mr. White. Petitioner dialed his wife, who was also a practicing attorney, and asked Barbara Dickerson, a jailer, to get on the phone to discuss a succession problem. Barbara Dickerson had previously requested advice from Mrs. Brumfield on this problem. Jenkins asked Petitioner if he wanted to see

Snyder, and Petitioner said, "Yes, if he wants to see me." or words to that effect.

Petitioner left the booking area, and White apparently walked out of the jail cell, went down the elevator to the first floor of the jail and into the parking lot, where he recognized a pickup truck he claimed he bought for his girlfriend. The pickup truck was being used by Petitioner at that time for his personal transportation with the knowledge and permission of White.

White proceeded to drive around the area and ultimately located Petitioner's law office which was directly across the street from the Petitioner's residence.

White apparently found what he needed and left the area in the Lincoln Continental which was the family automobile of Petitioner. The pickup truck was left at the family residence.

White testified that he proceeded toward Little Rock, Arkansas and along the route called for assistance.

White claimed that the escape was unplanned and that he took advantage of a fortuitous opportunity to walk from the building. In support of White's contention it is to be noted that there was absolutely no direct evidence or testimony that would establish a conspiracy, or plan as found by the Court.

In the meantime, Petitioner was informed of the escape, and at first assumed Jenkins was kidding him. When he became convinced that Jenkins was telling the truth, he remained at the jail for the purpose of giving a statement to the authorities.

After a lapse of time, Petitioner went outside, discovered the pickup truck was missing and went in to the jail to report the vehicle as stolen. He then called his wife

who came to pick him up, driving the pickup in question.

Later that evening, both Petitioner and his wife were placed in custody and subsequently released.

Approximately one year later White was arrested and returned to custody.

White was charged with escape and was tried and convicted of that charge. He was represented by Petitioner in that proceeding.

Snyder had been charged with conspiracy in the escape of White prior to the recapture of White.

Petitioner and Costales were charged with conspiracy in the escape of White and in aiding and abetting the escape of White subsequent to White's conviction of escape.

The court tried Snyder in a bench trial and found him guilty of conspiracy in June of 1982.

Having tried White and then Snyder, two days after the conclusion of the Snyder trial the court commenced a bench trial of the Petitioner.

The trial of the matter then moved forward with a hidden agenda which was probably not consciously known to the trial court but which agenda unfolded with dramatic surprise at the time of pronouncement of the decision.

The hidden agenda referred to was the use of evidence and facts found in the Snyder trial in making the decision in Petitioner's trial.

The reputation of the trial Judge requires that Petitioner make clear to this Court that such agenda was not created in a willful manner, but probably resulted from the feeling of the Court that he could judge Petitioner's case in a vacuum, as it were, without having the Court's previous thoughts

and findings impact on his thinking. The Court's known integrity and personal feelings on questions of judicial integrity are strong, and therefore the court undoubtedly unwittingly allowed itself to be led down the primrose path of Constitutional error in this matter.

Whether willful or unwillful, conscious or subconscious, the hidden agenda plagues us today just as it did in the courtroom, leaving serious Constitutional and procedural questions unresolved in its wake.

The importance of the Court's reliance upon Snyder cannot be overemphasized. The evidence against the Petitioner was virtually all circumstantial, and the Court itself said in its opinion "every bit of information, much of it circumstantial, had to fit or he (Petitioner) is not guilty." Appendix, Page 1, 41.

That much of the evidence did not fit will be discussed further as argument under REASONS FOR GRANTING THE WRIT.

Petitioner filed a Motion under 28 U.S.C. 2255 in the same district wherein Petitioner had previously been convicted.

Among the numerous legal and factual issues raised in the Motion (which included a serious challenge to the sufficiency of the evidence) are two of critical import before this Court:

A. Was the trial court biased and,

B. Were Petitioner's Constitutional rights violated by the original proceedings?

Analyzing the allegation of bias (a denial of Fifth Amendment due process) and the Constitutional questions involving the right to confront and cross-examine witnesses guaranteed by Amendment VI of the United States Constitution of necessity requires a

substantial review of the evidence, its sufficiency and inconsistency.

Judge Tom Stagg denied Petitioner relief on the 2255 Motion, which Order of denial was appealed to the Court of Appeals for the Fifth Circuit which denied Petitioner relief, claiming that the error was harmless. Appendix Page 196.

The Court of Appeals further held that taking notice of evidence presented in the Snyder case was error. Appendix Page 196.

In so doing, the Court of Appeals did not specify the legal basis for the error, perhaps feeling that the error was so apparent that further comment was not necessary.

Petitioner will argue that

A. The legal basis for the error is Constitutional, because Petitioner's rights under the Fifth and Sixth Amendments of the United

States Constitution have been violated; and,

B. The Constitutional violation controls the standard of review to be applied.

In summary fashion in its opinion, the Court of Appeals disposed of Petitioner's claim that bias on the part of the trial court violated Petitioner's Fifth Amendment Constitutional rights (due process), in effect finding no bias existed.

Contrary to the clear mandates of this Court regarding Constitutional error, the Court of Appeals passed over the question and applied the standard of review applicable to non-Constitutional error to determine whether or not the error found by the Court of Appeals to exist required reversal of Petitioner's conviction.

REASONS FOR GRANTING THE WRIT

I.

The burden is upon the Respondent to prove beyond a reasonable doubt that Federal Constitutional error was harmless error and did not result in reversible error.

The Court of Appeals in its unpublished opinion (Appendix, Page 196) makes the following statement:

> "Twice during the 41 pages of his findings of fact the trial judge referred to facts established in the prior Snyder trial. This was error. However, to obtain habeas relief Brumfield must show that the judge relied on the challenged facts and that this evidence caused actual prejudice. United States v.

Frady, 456 U.S. 152 (1982).

(emphasis added)

Appendix, 196, 208"

The Court of Appeals in following Frady Supra placed its ruling in direct conflict with the holdings of this court related to the standards to used in judging whether or not Federal Constitutional error resulted in reversible error.

The references to the Snyder trial apparently referred to by the Court of Appeals are the following:

> "It's also true that Mr. Donald E. Snyder, who was tried in this Courtroom on Monday and Tuesday of last week or Tuesday and Wednesday, rather, of last week, was the cellmate of Mr. White at the time of the escape and he was convicted by this Court on charges that he was involved in the conspiracy and

abetting and assisting in the escape of Mr. White."

Appendix Page 1, 5

And:

"I found as a fact in his trial that he was in his undershorts because it was a part of a scheme to delay the jailer at the jail cell door, and he was convicted on those facts. And those facts have not changed since Tuesday's trial of last week until this week's trial."

Appendix 1, 25

Neither Petitioner nor Petitioner's attorney had any advance warning of the intention to rely upon facts developed and found in the Snyder trial in its decision in Petitioner's trial. Who is to say that cross-examination of the same witnesses from Petitioner's perspective would not have

resulted in a different conclusion by the court?

The right to confront witnesses is guaranteed by Amendment VI to the United States Constitution which states in part:

> "In all criminal prosecutions the accused shall enjoy the right. . .; to be confronted with the witnesses against him." U. S. Constitution, Amendment VI.

Clearly, Petitioner's Constitutional rights in this regard were summarily denied in the determination of Petitioner's case.

The standard in determining reversible error is not that Petitioner show the evidence caused actual prejudice Frady supra because clearly the Judge relied on the Snyder facts, but a far stricter standard which shifts the burden to the respondent to show beyond a reasonable doubt that the error was harmless error.

The Petitioner respectfully submits to this court that the proper standard in evaluating the evidence to sustain this conviction was not followed and that the standard which should have been followed has recent statement in the case of Fahy v. Connecticut, 375 U.S. 85, 11 L.Ed.2d 171, 84 S.Ct. 229, and a more recent discussion in Chapman v. California, 386 U.S. 18, 17 L.Ed.2d 705, 87 S.Ct. 824, in which case the Court determined that there could be harmless Constitutional error. 375 U.S. 18, 23, 17 L.Ed.2d 705, ____, 87 S.Ct. 824, 827, establishing as the minimum standard for determining whether or not the Constitutional error required reversal as follows:

> "...we hold, as we now do, that before a federal Constitutional error can be held harmless, the court must be able to declare a

belief that it was harmless beyond a reasonable doubt."

Chapman v. California, 386 U.S. 18,24.

This Court further amplified its position stating:

"Certainly error, constitutional error, in illegally admitting highly prejudicial evidence or comments, casts on someone other than the person prejudiced by it a burden to show that it was harmless." 386 U.S. 18, 24.

As previously stated, the Court of Appeals in its opinion refers to two references to the Snyder; and Petitioner has reproduced supra Page 19 those portions of the opinion to which the Court of Appeals apparently made reference.

Reading the opinion of the trial court(Appendix Page 1) reveals references to

the Snyder trial on Appendix Page 5 and Appendix Page 25. References to the findings in Snyder are to be found in the Appendix Page 56 and Page 58. The word Snyder or references to Snyder appear in the court's opinion a total of twenty-one (21) additional times. The importance of Snyder is therefore clear and may well have controlled the court in the case of Petitioner.

It is respectfully submitted that the respondent cannot show beyond a reasonable doubt that the notice of the Snyder trial was harmless error.

II.

Bias on the part of the trial court can be demonstrated violating Petitioner's right to due process under the Fifth Amendment and mandates the reversal of Petitioner's conviction.

Chapman supra in following Fahy supra leaves standing certain Constitutional errors which require reversal, among them trial by a Judge who is not impartial. In this regard the in Chapman the Court stated:

> "Although our prior cases have indicated that there are some Constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error,[8] this statement in Fahy itself belies any belief that all trial errors which violate the Constitution automatically call for reversal. (emphasis supplied)
>
> 386 U.S. 18, 23

including by reference in Note 8, the mandatory reversal when the trial was conducted by an impartial judge. (Citing Tumey v. Ohio, 273 U.S. 510, 71 L.Ed. 749, 47 S.Ct. 437) 386 U.S. 18, 23.

While Tumey does not refer to Amendment V of the United States Constitution, it does involve due process and is consistent with the Fifth Amendment due process requirement.

Judge Stagg in his opinion cites United States v. Richards and quotes therefrom:

> "Because no one has a window to a man's mind, knowledge must often be proved by indirect evidence."

Usually the same can be said of proof of individual bias, for certainly proof of bias requires proof of an individual's state of mind. Unintended or subconscious bias because of the inherent subtlety thereof is probably harder to prove or perceive than overt bias, because the person who is so biased does not recognize the existence thereof.

The proof of bias in this case is to be discovered within the framework of the opinion of the Court. The proof starts with

the statements of the roots of bias by the Court and reaches its crescendo later in the opinion. Interwoven into the fabric of the opinion are comments and decisions which develop and support this unfortunate theme.

The statement of the roots of bias are set forth in the opinion:

> "It's also true that Mr. Donald E. Snyder, who was tried in this Courtroom on Monday and Tuesday of last week or rather Tuesday and Wednesday, rather, of last week...was convicted by this Court on charges that he was involved in the conspiracy...in the escape of White.
>
> Appendix Page 1, 5.

The Court thus was placed in the position of having to put the Snyder trial out of its mind in order to try the Petitioner without being biased or prejudiced

by Snyder. That the Court could not and did not do this is not only evidenced by references to the Snyder trial in the opinion, but booms out with resounding clarity in this statement by the Court:

> "Snyder was a co-conspirator with White and with Brumfield and part of the plan was for him to be undressed when Jenkins came to get them. The distractions I found were so effective that Jenkins was still at the door waiting for Snyder and Dickson was still on the telephone when Garvin Dale White was long gone from the police building. (emphasis supplied)
>
> Appendix Page 1, 52

Clearly Judge Stagg was referring to his findings in Snyder by the use of the past tense, and this is not a grammatical error because the court clearly reserved the right

to correct grammatical errors in the Court's opinion stating:

> "If it would be in the future necessary for this opinion to be reduced to writing, I reserve the right to edit and to use proper grammar but not to change the substance of the findings or the conclusions.
>
> Appendix, Page 1, 7

Judge Stagg did not elect to change the above remarks to the present tense, making it even more clear that the reference was to the findings in the Snyder case.

Certain remarks by the Court reflect the bias. With reference to a statement by Petitioner on the witness stand that the attempts to contact Aguilar were related to arranging a "bust in the Shreveport area," the Court replied "Horsefeathers."Appendix Page 1, 47. This remark is made with the

clear knowledge of the fact that this statement by Petitioner was substantiated in part on rebuttal by the Government when Hawkins, a key witness, admitted that attempts were being made to arrange an arrest in his area. Transcript of record, Page 659-660.

The Court by so stating gave credibility to a statement by Agent Hawkins that "he did not know what a non-tower strip was." Transcript of Record, Page 657.

Finally, the Court makes this statement:

> "It is only in conclusion that I say that the credibility choices that the court was required to make, many of them were in favor of the defendant but many of them were not."

Appendix, Page 1, 64

Obviously, a witness is either credible or not credible. How can one be credible on

one issue where credibility is critical and not credible on others?

It is difficult to analyze the foregoing statement by the Court unless one accepts as a fact that the Court had to make selective credibility decisions between Petitioner and the Government's witnesses in order to reconcile his decision in Petitioner's case with his predetermined bias and with the Snyder case.

Reconciling the evidence in Petitioner's case to the Court's finding of guilt in the Snyder case caused the Court to make certain factual premises which had no basis in the evidence in this case and further caused the Court to totally ignore facets of the evidence that clearly rebut the proposition that a plan was in place as thusly stated by the Court:

> "If this plan was hoped to succeed and it did, it succeeded marveously

well, because both of the people that needed to be distracted were still distracted while Mr. White went down the elevator, out in the yard, into the pickup and off the parking lot."

Appendix, Page 1, 28

The problem first of all with the Court's assumption that this was a plan is that there is no evidence that an attempt was made to distract Mr. Blake who signed Petitioner in that evening to see Mr. White, and the Court conveniently ignores Mr. Blake in its analysis. Appendix, Page 1, 22.

A second major problem with the plan as found by the Court is the matter of timing, how in the world could the alleged conspirators have planned to have the elevator in place at exactly the right time?

A third major problem with the plan as found by the Court was that it offered no

means of controlling the observation of White walking through and out of the building once he reached the first floor thereof.

Only a fool of the first magnitude would formulate a plan with so many potential flaws and only a fool Magna Cum Laude would further formulate a plan which would have the escapee go to Petitioner's house (Appendix, Page 1, 27), take Petitioner's Lincoln Continental automobile (Appendix Page 1, 27), and proceed to North Little Rock Airport.

The obvious problems with the plan lead one to the inescapable conclusion that happenstance and White's desire to escape and not assistance by Petitioner allowed White to get to North Little Rock Airport.

The Court makes much light of its conclusion that Costales, an alleged co-conspirator, was at the North Little Rock Airport. In fact, the only evidence that would point to this was that the fingerprints

of Costales were in the vehicle (Appendix Page 1, 47), which presence could be explained by the fact that Costales went with Petitioner to his brother's (Appendix Page 1, 9).

The analysis of the conflicting evidence must, of course, emphasize one fact, and that is Petitioner called his wife to pick him up (Appendix Page 1, 32). If there was a plan, then Petitioner of necessity would have had to know that the only vehicle at his wife's disposal would be the pickup truck which he had just reported stolen and under no circumstances would he have had her come to the jail in that pickup which, in fact, she did (Appendix Page 1, 33).

Inexorably we are drawn to the conclusion that the Court was biased and could not overcome in its mind the conclusions reached in the prior Snyder

trial, notwithstanding the substantial evidence of Petitioner's innocence.

CONCLUSION

Petitioner respectfully requests that a Writ of Certiorari issue to resolve the conflict between the Court below and this Court as to the standard for determining reversible error when the error is Federal Constitutional error occurring in proceedings which are being collaterally attacked in 2255 proceedings.

Ancillary to resolving the conflict the Petitioner requests not as a reason for granting certiorari, but for the purpose of resolving all issues and preventing furhter that this court review the problem of bias herewith submitted.

Respectfully submitted,

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APPENDIX

A printed Appendix independent of this petition has been filed with the Clerk of this Court and the page references in this petition are to said Appendix

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(2)

NUMBER 86-1905

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER 1986 TERM

JIMMIE ARNOLD BRUMFIELD II, Petitioner

v

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI

APPENDIX

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IN THE SUPREME COURT OF THE

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APPENDIX

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

UNITED STATES OF AMERICA :

Plaintiff,:

-versus- : Criminal No.

JIMMIE A. BRUMFIELD, II, : 82-50004=02

Defendant.: Volume VI

TRIAL COURT: Honorable Tom Stagg, Judge

TRANSCRIPT: Reporter's Official Transcript in Above Cause

LOCATION: United States District Court, Shreveport, LA

DATE: June 14,, 1982

TRANSCRIPT FILED: _____

BILL HOGAN, RPR

Official Court Reporter

United States District Court

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(318) 226-5293

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BE IT REMEMBERED that in the United States District Court for the Western District of Louisiana, Shreveport Division, in the United States Courthouse, in the City of Shreveport, Parish of Caddo, State of Louisiana, on the 14th day of June, 1982, the above entitled cause came on for a ruling before the Honorable Tom

Stagg, Judge of said Court, and the proceedings on the ruling are in the words and figures following, to-wit:

THE COURT: The Court has listened to the testimony of a considerable number of witnesses for three days. I took in excess of a hundred pages of trial notes while the testimony unfolded. I have read all of the exhibits that were filed in evidence as transcripts of recorded statements and other documentary evidence that was submitted. And I'm now required to make findings of fact and conclusions of law based on the testimony and the evidence in the case.

There are a few preliminary facts concerning the defendant, Brumfield, who served as the attorney for a person well-known to this Court to be an escape artist of sorts. And he served as his attorney back in 1979, in late 1979, when

Mr. White pled guilty in this Court on marijuana charges and was sentenced, I think in December, and transported to the DeSoto Parish Jail from which Mr. White escaped the following day. But while Mr. White was in and out of the DeSoto Parish business, he stayed in the Shreveport Jail, I believe my memory serves me correctly that he was in and out of the Shreveport Jail for four or five months during 1979. Only a short part of that time was he represented by Mr. Brumfield as an associate of another attorney, Mr. Graham Rogers.

Mr. White, the Court finds as a fact and it has been stipulated so it's not necessary really to find it that Mr. White was a Federal prisoner when he escaped on November 1, 1980, having been housed in the city jail pursuant to a writ of this Court and that it's easy to

me to find that he walked out of the city jail on November 1, 1980. Of course, this Court was the trier of fact on that charge of escape for which Mr. White was convicted on December 14, 1981.

It's also true that Mr. Donald E. Snyder, who was tried in this Courtroom on Monday and Tuesday of last week or Tuesday and Wednesday, rather, of last week, was the cellmate of Mr. White at the time of the escape and he was convicted by this Court on charges that he was involved in the conspiracy and abetting and assisting in the escape o Mr. White. And that conviction was based on evidence of Mr. Snyder's delaying tactics in order to distract the jailer and to give Mr. White the opportunity to get to the jail elevator and out of the building.

One of the questions in this case

then is whether Mr. Brumfield had a part to play in this same scenario which has been played out in this Courtroom now for the third time. Before the date of the escape on November 1, the testimony shows that Mr. Brumfield was contacted by Mr. White's mother and she stated that Mr. White had been apprehended in Florida, Berra Beach, I think; and asked Mr. Brumfield to consider to represent him, instructed Mr. Brumfield to negotiate the fee with Mr. White. Mr. Brumfield went to Florida to confer with White and while he was there, he met Randy Costales for the first time, who had been with Mr. White at the time of his arrest in Florida. And he met with Dale White who is the son of Garvin Dale White whom Mr. Brumfield knew from the days of his representation of Mr. White while Mr. White was in the Mansfield Jail. I recall that

Mr. Brumfield or someone or Mr. White said that his son was brought to the jail but the folks in Mansfield wouldn't let the son see Mr. Garvin Dale White, but I remember that the fact of it is that Mr. Brumfield already knew Dale White but he met Randy Costales in Florida for the first time.

I have dozens of edge tabs and other markers to key me to certain bits of testimony so if I seem to you to wander, it is, in fact, true that I am trying to put this together in as cohesive an order as I can. If it would be in the future necessary for this opinion to be reduced to writing, I reserve the right to edit and to use proper grammar but not to change the substance of the findings or the conclusions.

In any event, while Mr. Brumfield was in Florida, Mr. White was transferred

to Shreveport and arrived here, I think on the thirteenth. The jail reggister shows that his first visitor was on October 14 when Mrs. Brumfield went to the jail to see Mr. White and the record shows that on the fifteenth, Mr. Brumfield came back from Florida and went to the jail to see Mr. White at ten o'clock at night -- eight o'clock at night, twenty hundred hours.

Randy Costales arrrived in Shreveport from Florida on Sunday the nineteenth of October. The testimony is that he was bringing some suitcases and a flight bag and a briefcase and other matter belonging to Mr. White which Mr. Costales had gathered together in Florida. He came to Shreveport and was housed at the office, law office across the street from the defendant's residence. There is a residential residence at 2920 Kirk

Lane; there is an office residence at 2921 Kirk Lane. Mr. Costales moved into a bedroom in that residence on the nineteenth. The record shows that he stayed at that residence the nineteenth, the twentieth, the twenty-first, twenty-second, and twenty-third, that on the twenty-fourth, he traveled to Franklinton with the Brumfields; stayed there the twenty-fifth, twenty-sixth; went over to Covington on the twenty-seventh; came back to Shreveport late in the night of the twenty-seventh and the record shows that Mr. Costales was left at the airport by Mrs. Brumfield sometime during the mid-afternoon. Mrs. Brumfield didn't recall at which terminal or did not know what he -- what was his destination.

When they were in Franklinton, Mr. Costales was introduced to the defendant's brother, Billy Brumfield, as

or in the name of Randy Conn. He testified -- Billy Brumfield testified that the introduction was under the name of Costales and that he merely misunderstood that it was Conn but that's neither here nor there. It doesn't prove much of anything. But the Government's Exhibit Forty-Seven, which is the statement given by Billy Brumfield, a length statement given to Marshal -- United States Marshal Fortier on November 4 indicates to the contrary that Billy said several timess that Randy was introduced as Conn rather than otherwise. In any event, after the Franklinton visit where they slept in Billy Brumfield's trailer, ate at their family table, shot rifles at targets and stayed together for three days; they returned to Shreveport and Mr. Costales on Tuesday the twenty-eighth left for parts or parts unknown. But while he was

in Shreveport, the record indicates that he visited with Mr. White in the jail at least on one occasion. Mr. Brumfield had access to the jail and had the ability to bring Mr. Costales to the jail to see Mr. White.

The record indicates an extract of the Government's Exhibit on the jail log shows that between the time that Mr. White was transferred to Shreveport on the thirteenth of the month of October that Mr. Brumfield visited or signed in to visit with Mr. White between the thirteenth of October and the first of November that he signed in to see him at least fifteen times. Only on one of those occasions does the record show that Mr. Costales was with him.

When Mr. Brumfield was asked on the witness stand how did it happen that Mr. Costales was there when he went -- when

he -- Brumfield went to visit White, he answered: "I don't know. I didn't know him." Later, he testified in an answer to other questions that he understood Mr. Costales was a very good friend or family relation of Garvin Dale White. He was asked by Mr. Stroud: "Well, why,, if you just met him, did you invite him to say in your house?" To which Mr. Brumfield disingenously answered: "Because he took -- he chaffeured me around in Florida and he took care of me and I'm just a country boy." To which, under his voice, I heard Mr. Stroud answer: "I'm a country boy, too." So, whether or not one fellow had reason to believe the other fellow is what this lawsuit is all about. It suffices to say that Mr. Costales was a close associate of Mr. Brumfield -- of Mr. White's and for some reason, he stayed with the Brumfield's for the bet-

ter part of ten days. And I think it's clearly shown in the record and from the concrete evidence before this Court that Mr. Costales was ultimately at the airport in Little Rock when Mr. Brumfield -- Mr. White got there or arrived there under some circumstances which the record does not indicate.

During the time that Mr. White landed in the Shreveport Jail, Mr. Brumfield went to work with the agents of the Drug Enforcement Administration in an attempt to negoiate a plea agreement for Mr. White directed I presume towards the shortening of his sentence since I have read quite a number of the defendant's notes that he made during those negotiations. My name appeared in there several times, length of sentence appeared in there more than once and it seemed to be some concern being evidenced

about how long Mr. White would have to stay in jail. I received or directed that those documents be received in evidence to show that there was an ongoing negoiation between the agents for the DEA, agents for the Government and Mr. Brumfield on behalf of Mr. White.

Both Mr. White and Mr. Brumfield testified that at the time of the escape, they considered the negoiations were continuing. The DEA agent who was involved most heavily in those negoiations testified that any plans that they had been working on had been called off on October 31, because not much of the information revealed by Mr. White could be verified. Mr. Hawkins in answer to a question said: "He had generally given me only surface information." The fact that they were discussing plea negoiations together isn't dissentitive in a finding of

whether Mr. Brumfield is guilty of conspiracy or guilty of aiding and abetting an escape. It does stand to buttress Mr. Brumfield's testimony that that was the cause of a large number of trips by him to the city jail. And I notice that some of those trips occurred at one-thirty on the sixteenth, one-fifty on the seventeenth, at three-thirty on the twentieth. I'm skipping those that occurred late at night. There were times of meetings at the city jail or signings in at the city jail that would lead you to believe that that would be a time of day during which he would have been there in the company of the DEA agent for the purpose of discussing information. In any event, the testimony of Mr. Hawkins is that the negotiations had come to a halt. Mr. Brumfield's notes had it on the last one: "Why is Mr. Hawkins taking such a hard

line on the escape?", which, read one way, says we're in difficulty; read another way, it has an innocent explanation. In any event, I find that Mr. Brumfield could not have been at the city jail on the night of November 1 for further discussions of plea bargains. Those possibilities had diminished by that time. And, furthermore, this jail log is interesting because it shows that on October 30, at 7:40 P.M., Mr. Brumfield went to the jail and at 7:40 saw both Garvin Dale White and Donald Snyder at the same time or the record shows it to be at the same time. There was some testimony to the effect that one man was there for forty-five minutes before the other man was brought in on one of those nights. The same thing occurred on October 31, Friday night, at 8:35, Mr. Brumfield's shown, his signature is shown

to have signed out for both Garvin Dale White and Donald Snyder at 8:35. So for two nights running Mr. Brumfield talked to both Garvin Dale White and Don Snyder together. On the night of the escape, he told the jailer after he asked for Garvin White to bring out Mr. Snyder, too. It would be hard for me to believe that Mr. Brumfield would be discussing confidential information on the inner workings of the narcotics traffic in this country to lead to plea discussions with the Government and have those conversations going on in the presence of Mr. Snyder, if that is, in fact, what they were talking about.

There were several police officers who observed Mr. Brumfield's pickup truck. These officers tesified that they came to work at nine-thirty to go out on the evening shift and that the pickup

truck would be on the parking lot parked in a place where one or more of them usually parked, so it was noticeable, and that it would still be there when they came out in the morning. I think the presence of that truck on that parking lot under those circumstances has an innocent explanation; at least, it could have in part.

On the twenty-fourth when Mr. Brumfield went with Mr. Costales and his wife and baby to Franklinton, the witness Rodriguez testified that he was asked to go fix it because it wouldn't start. And it was left on the parking lot Friday night. It would have been there Saturday morning and it would have been there Saturday night and it would have been there Sunday morning and it would have been there Sunday night. And Mr. Rodriguez testified that he sent his man

to fix it early in the morning of the twenty-seventh and the keys were under the floormat and the door was left unlocked. Mr. Brumfield and his and Costales and wife and baby got home from Franklinton late on the night of the twenty-seventh. Mr. Brumfield is shown to have checked into the jail to see Mr. White at 10:20 in that evening. And any policeman who came to work at nine-thirty that evening would have seen no truck -- would have seen the truck because it had there all weekend and up at least to the time of ten-twenty when Mr. Brumfield came. Mr. Brumfield could not recall whether he took that truck home on Monday night or Tuesday morning.

There is a slightly -- there is a statement given by Mr. Brumfield to the United States Marshal -- would you hand me that sheet on top, please?

(indicating)

(Docment tendered)

THE COURT: In the statement given on -- to the Marshal on November 5, there's a slightly different explanation where on Friday, Mr. Brumfield said that he and Costales drove to the jail but Costales decided not to go in and called Mrs. Brumfield to come pick him up. Upon completing his business at the jail, Mr. Brumfield couldn't locate his truck keys so he called for Mr. Costales to come pick him up and he met Costales on the corner, left the truck on the parking lot. This is from Government's Exhibit Fifty. After which, they soon departed for Franklinton. Now that there is -- under either version, the presence of the truck is explained.

On other occasions testified to by the police officers and they said they

saw it on most of the nights in question up until the night of the escape. The truck could easily have been there because Mr. Brumfield would be visiting with Mr. White. The officers noted the truck when they came to work and they said that was around nine-thirty. The book shows that on the twenty-eighth, Mr. Brumfield arrived at 8:05, on the twenty-ninth, Mr. Brumfield came to the jail at 7:05. He could have still been there. On the thirtieth, he came to the jail at 7:40, on the thirty-first, he came to the jail at 8:35. The truck could have still been there when the officers came to work. There's a very large question of whether the truck was there -- in other words, it's possible for the officers coming on duty to testify that the truck stayed on the parking lot. And particularly, it would have been noticeable

if it -- each time Mr. Brumfield parked it in the same place.

Anyway, coming up to November 1, at 8:35, Mr. Brumfield signed into the city jail to see White. Mr. Blake gave him the book and he put his name in it. Mr. -- Mr. Jenkins started down the hall to get Mr. White. Mr. Brumfield began a conversation with the lady jailer, Barbara Dickson, about a family succession proceeding she had asked Brumfield about to handle for her. Mr. Brumfield testified that he dialed his wife, who's also a lawyer, and when she answered the phone, he testified he said: "Barbara, pick up." And Barbara picked up a phone towards the back of the booking desk where she was stationed. And that caused her to have a back turned to the hallway which led to the cells where Mr. White and Mr. Snyder were. Mr. Jenkins, after

-- first, the sequences that he -- first, he signed the book to see White. Mr. Jenkins left the desk to get White. Then Mr. Brumfield asked Ms. Dickson about the succession legal matter. Fourth step, Mr. Brumfield picks up a phone on the front desk to call to Arax and then he said: "Pick up, Barbara." And Barbara goes over to the rear phone to speak to Mrs. Brumfield. Jenkins lets White out of the Federal cell and closes the door. It is either that someone -- Mr. Jenkins asked Mr. Brumfield if he wants to see Snyder or Jimmie asked for Snyder -- it doesn't matter. It occurred while Mr. Jenkins and Mr. White are leaving the Federal cell. Mr. Brumfield answers or nods in the affirmative. He testified he said: "Yes, if he wants to talk to me." Whereupon, Mr. Jenkins turned around and went back to the cell, opened the cell

door and told Mr. Snyder to get dressed. Mr. Snyder then went to the sleeping area to put on his coveralls. Mr. Jenkins said he stepped in the cell entry way and out of the hallway. Mr. Brumfield, at that point, is either at the booking desk or on his way to the conference room to talk to some drunk named Miller. And Mr. White continues up the hall. The elevator comes up, the door opens; Mr. White either signaled that elevator or it fortuiously showed up. He got on the elevator, roughly shoved the trustee to one side, operated the button to the first floor and walked out off the jail to the parking lot.

Now Mr. White was dressed in a jogging suit or a sweatsuit. Anyway, civilian rather than jail clothing. It's funny. Mr. White testified that he wore that suit because it was cold in the

cell, chilly in the cell, but Mr. White's cellmate, Snyder, was in that same cell with him and he was clad only in his undershorts. That's an inconsistency that crowds in on you when you try to take these things to part one step at a time. This, you will remember, was on November 1, and the man well have been in his undershorts because it was more comfortable. I found as a fact in his trial that he was in his undershorts because it was a part of a scheme to delay the jailer at the jail cell door, and he was convicted on those facts. And those facts have not changed since Tuesday's trial of last week until this week's trial.

Anyway, when he got to the first floor, Mr. White calmly walked out of the building. He said it was not calm, that his heart was racing; but he went to the

pickup which he recognized as having formerly belonged to himself and that he had some keys hidden in that truck underneath -- in a magnetic keybox underneath the toolbox in the back of the pickup. This explanation could as easily be true as untrue. He said he had the vehicle specially fixed up for his girlfriend and it was to haul a speedboat and that he hid keys under the toolbox and he also hid keys by taping a set to the radiator pipe. One can only wonder if he was giving that truck to his girlfriend, why did he hide keys in it? Well, nevertheless, that has nothing to do with this case except he said he had hidden keys in the pickup truck. It is to be noted that Mr. Brumfield left that truck on the parking lot for several days before that with keys under the floormat in the front seat, because Mr. Rodriguez says that's

where they were and that's where he left them. It really isn't too critical. Either Mr. Brumfield left his keys, a set of keys under the floormat or Mr. White had a set of keys handily fixed where he quickly could get to them. In any event, he took off in that pickup truck and drove to Mr. Brumfield's house, he said, by a meandering route, that he looked at a map in a filling station window and then drove over the Interstate and off the Interstate on Airline Drive to Kirk Lane and left that Kirk Lane area in a Lincoln Continental belonging to Mr. and Mrs. Brumfield. And he went to North Little Rock where he got on a -- some manner of private aircraft and eluded law enforcement officials for the next eleven months.

There's a great deal of wonderment to what happened immediately after Mr. --

important what happened before and the week before, but what happened after, the immediate aftermath of the escape? The trustee who had ridden on the elevator down with Mr. White came back up and told Mr. Jenkins what had happened. Where was Mr. Jenkins? He was still standing at the jail cell door waiting for Donald Snyder to put on his overalls. He -- Jenkins said -- he testified he slammed the door shut and went to the booking desk and where was Barbara Dickson? Barbara Dickson was still talking on the telephone to Mrs. Brumfield about the succession matter. If this plan was hoped to succeed and it did, it succeeded marvelously well, because both of the people that needed to be distracted were still distracted while Mr. White went down the elevator, out in the yard, into the pickup and off the parking lot. And

until the trustee got back up to the jail to tell Mr. Jenkins what had happened, both the jailer -- both of the jailers were still distracted from watching anything to do with the elevator door. Mrs. Dickson said she immediately hung up on Arax and called downstairs to the jail. Mr. Jenkins rode the elevator down to the first floor to look for Mr. White and to alert the police department about the escape. He didn't see White so he went back upstairs and he went to the conference room to tell Mr. Brumfield what had happened. Jenkins testified that when he told the defendant about -- Mr. Brumfield about the escape, Mr. Brumfield said he had to be kidding. Don't -- you know -- he thought his leg was being pulled particularly since he had suffered through the Mansfield escape period. Mr. Jenkins assured him it wasn't so. To

which Mr. Brumfield responded that he's better write a statement because they, I presume police, they would want to talk to him about it. The Government's Exhibit Eleven is the -- is a copy of the handwritten statement written Mr. Brumfield beginning immediately or soon after the events took place. It's dated one, November, at 2120 hours, which would be 9:20 he wrote out the statement.

Detective Shields came on to testify that he arrived at the jail between eight-forty-five and nine o'clock having heard about the escape on his radio. He first saw Mr. Brumfield in the break room right next to the booking desk and that they talked in that room. Mr. Brumfield agreed with that. He said he had -- he testified he talked to Shields for twenty or thirty minutess before he gave any recorded statement. Then after, I suppose,

further conversations with Lieutenant Bryant and Chief Heap was there and Terry Shields was there and Mr. Jenkins was there and others -- after all that conversation subsided, then the record shows that Mr. Brumfield went with Mr. Shields -- Officer Shields to the detective office where he gave a recorded statement which was recorded beginning at 11:11 and it lasted until 11:26 -- Government's Exhibit Thirty-Four.

Brumfield then testified that he left the detective office, went out of the building to get in his car -- in his truck and go home and found it to be missing. He returned immediately to the detective office and reported his truck was missing, exhibiting his keys or his set of keys to the truck to which he said and Mr. Shields testified also that he said it was -- to his knowledge, the only

set of keys and he added a somewhat poignant thougght: "My name is 'Mud'," because of his circumstances. And then he gave his seccond recorded statement which began according to the typescript of Government Thirty-Five which began at 11:39 and terminated at 11:54. Afterwards, he called his wife and asked her to come and get him. He said he didn't tell her about the escape or anything, that he used some of the same language that he used in Exhibit Thirty-Five. It was something he testified: "I don't know of a single other thing -- single thing else that can go wrong." And he -- it is testified or was testified either by him or by his wife that he said to her: "What -- if anything else can -- whatever can go wrong has gone wrong" or words to that effect. He did not want to alarm his wife at the phone call, he

said, and did not tell her what had happened.

She testified that about midnight she left her house in the white pickup truck, the same one that Mr. White had driven from the jail to the house. That matches the time because if Mr. -- if G-35 ended at 11:56 or 11:54, rather, whereupon Mr. Brumfield called his wife and she testified she left the house at around midnight. That matches all of the statements. She testified that she didn't notice what cars were there in the driveway when she went outside. She simply got in the truck and came to the jail; though Mr. Brumfield had told Detective Shields that there was only one set of keys to his knowledge. Mrs. Brumfield had a set of keys which she said she used to get to the jail and it was the same set of keys that Penny Frazier

had kept for a number of weeks and who by coincidence otherwise had brought those keys back on the evening before when she came to dinner on the evening of October 31. I think both women testified that Mr. Brumfield was not at home that evening and he did not see those keys returned. This would explain why Mr. Brumfield didn't know his wife had a set of keys and why he was so surprised to learn that she'd driven up to the jail in the truck, if he, in fact, thought he had the only set of keys. But then Detective Sheilds said that when he told Mr. Brumfield of the arrival of his wife in the pickup truck that Mr. Brumfield responded by putting his head down on the table on his folded arms. And that when he looked up a short time later, his eyes were watery, a reaction prenant with guilty knowledge or normal reaction of somebody

astounded by the turn of events? Nevertheless, a short time thereafter, Mr. Brumfield was taken into custody and was housed in the city jail.

Mr. Billy Brumfield testified about several phone calls he received from persons identifying themselves as Garvin Dale White and Randy Costales that began on November 3. The caller identified himself as White and said he had Jimmie's car. In response to Billy Brumfield's questions, White acknowledged that he was the person who had just escaped from jail and explained that he was not the person who had come to Billy Brumfield's house with Jimmie, but that person was with him. And then a person who called himself Randy got on the phone. Mr. Brumfield couldn't say he made voice identification. Anyway, the request was that Billy go to Little Rock and pick up the

car. It was explained that the Lincoln keys were in the gas filler cap. After that conversation, Billy talked it over with his daddy and they went to the sheriff to say what they knew. The sheriff notified the Marshals and on the next phone call, there was a recording device for the November 4 phone call which concerned the automobile. This conversation is in the transcript which is Exhibit Twenty-Eight.

Billy testified that he told Randy that he had not picked up the car yet because he didn't have any money. Randy assured him that the money would be at Western Union the next day. My notes show that there is Exhibits Twenty-Three, Twenty -- Thirty-Two and Thirty-Three which were money orders for five hundred dollar -- a money order for five hundred dollars received at the Franklinton West-

ern Union Office on the fifth of November from Flagstaff, Arizona. Mr. Brumfield -- Billy Brumfield testified that nobody in Flagstaff, Arizona owed him any money. And he gave the money order to the Marshals who gave him a receipt. Costales called back, I think, on November 7 and Billy told him he still hadn't picked up the car. He feared he waited too long and Randy said: "I don't know. I'll talk to Arax about it or you talk to Arax about it or I will." And there was another call, either again on the seventh or on the eighth of November inquiring about the status of the car. And he asked Billy: "Since it's the weekend, can you go get the car? And if you'll go get it tomorrow?" And then he told Billy an interestingg thing: "Don't tell anyone where you got the car. Tell them you've had it all along." And Billy

played along with the game: "You mean like they came down here last weekend and I've had it ever since and got it fixed and bring it back to Bossier?" And the voice on the telephone, Mr. Costales, did not know that the Inspector Bramel from Little Rock had got a call from -- on the fourth from the Shreveport Marshal's office about the car and on the fifth had already located the car at the airport and shortly thereafter, it was processed for fingerprints.

Well, what does Mr. White say about all this? Mr. White testified that Mr. Brumfield, in his words, had nothing to do with the escape. He stated that when he saw both of the jailers were distracted and the elevator was open, he made a, using his words, a sponaneous decision to leave. On cross examination, he testified that he didn't know the

truck was out there in the parking lot and that he would have just kept on walking if it had not been there. He did state that he had used that pickup to get Mr. Brumfield's house to pick up some stuff he needed that would help him get out of the country. In his briefcase, he said, there were telephone numbers of persons who could hide him. And Mr. Stroud pressed Mr. White. He says: "All right. Who are those people? Where are those numbers? What are their names? Mr. Greer, you will remember, who was here to protect the Constitutional rights of Mr. White, intervened on Mr. White's behalf; but, in any event, certain names were mentioned at that time, which we'll get to in a minute. Mr. White says he went to get those belongings and that when he went outside to leave, he found the truck was gone and he went back in

and found some keys to the Lincoln and cranked up the Lincoln and headed toward Arkansas. And that he stopped eighteen or twenty miles out of town, I presume in the vicinity of Dixie Inn and bought a hamburger and a coke and headed north through Arkansas and on the way, he stopped to place a call to his friend, Rapheal Aguilar, in Mexico, using some of the money he kept in his sock while he was in jail. And after he got to Little Rock, he was picked up by an airplane with two Mexican pilots whose names he didn't know.

Mr. Brumfield testified first that he didn't know White was going to escape and that all these good things were going on in his behalf with the DEA. The statement that he wrote which is Government's Exhibit Eleven immediately after the escape are consistent with the

sequence of events that I have found to have existed during the short period from Mr. Brumfield's arrival at the desk until Mr. White stepped into the elevator.

However, the other circumstances surrounding the escape both before and after and Mr. Brumfield's explanation of them are not credible nor is Garvin Dale White's version of his escape believable. There are too many coincidences that came together to produce anything other than a planned escape. For example, if you wonder what I'm looking at, to keep track of what happened, I had to make a calendar of October and every bit of information that came to pass I put down on the day that it came to pass to try to find out if Mr. Brumfield was guilty of aiding and abetting in this escape and every bit of information, much of it circumstantial, had to fit or he is not guilty.

He was asked in Government's Exhibit Thirty-Five on page four, talking about Dale White, and I think Brumfield said: "I think at one time he lived in Florida." That's on the bottom of page three and top of page four. "When was the last time you spoke with his son?" Answer: "Last night at thee jail." "At what jail?" "At this jail." "Okay. Was he here?" "Oh, no. He was not here. He called on the phone and I talked with him over the phone because we were trying to work out the situation I had told you about earlier." "Okay. When was the last time before that that you talked with the son?" "That afternoon." "Yesterday afternoon." "At my office, yes, sir." "Okay. Where was he calling from then?" "I believe it was Arizona." "Okay. What kind of work does he do?" "He indicated to me he was a carpenter

and that he . . ." et cetera. "And when's the time before yesterday afternoon that you talked with him?" "I can't remember that." "Would it have been this week?" Answer: "It would have been this week. Yes, it would have been sometime the early part of this week probably." "Okay. And what was that conversation in reference to?" Defendant answers: "This case we're working on now. He has privied information concerning this Aguilar." "Right." Brumfield says: "He knows the house number -- phone number and then evidently has gotten some people to go down there and he contact -- and be contacts for him in his operations."

Well, if you plop that onto a map, the escape occurred on Saturday and Mr. Brumfield talked to Dale White about Mr. Aguilar in the afternoon of the thirty-first the day before and at night the day

before; and on Wednesday or Tuesday of that week, he -- Mr. Brumfield testified that he talked to Dale White about Aguilar's home number. That's a bit of a coincidence but then if you look in the testimony about Mr. Aguilar, the testimony of Mr. White, when he was asked: "Did you know where the office was? Did you leave the keys in the pickup?" "No, they were in my briefcase." Oh, and then he said: "I believe -- I believe so." "Did you leave the keys in the pickup?" He said: "I believe so."

And Mr. Stroud is asking him: "You needed maps to get out of the area and the phone numbers of key people to help you out of the country?" To which he answered, after consulting with Mr. Greer: "Yes." Mr. Stroud said: "Who are these people?" He answered: "A Mexican friend, Rapheal Aguilar." Then

he was asked if there was anyone else? And that -- my notes run out about that point. But then Mr. Aguilar's name came up again with Mr. Stroud talking about the phone numbers: "Were any calls made from the Brumfields' house at the night of the escape?" To which Mr. White said "No." "Who did you call?" He said: "I called Rapheal out of the country." "Where were you when you made that -- made the call?" He said he made two calls. He called for a waffle shop up where this country road meets the Interstate in Arkansas. And he got a Mexican friend who couldn't speak English and he paid for the call. "How much was the call?" "Three or four dollars." "Did he fly up to get you?" "No, he didn't." And then later: "What type of plane?" That wasn't answered but he did testify that two Mexican pilots came to pick him

up.

Now, if you follow the evidence, you would have read Government's Exhibit Eighteen which was recovered from the back of the Lincoln automobile in Little Rock. It was testified that this was mostly in Mr. Brumfield's handwriting except for a page written we presume by Mr. White in his handwriting with phone numbers on it. And the note is telling Mr. Brumfield -- he's an inveterate note-taker and about as bad as I am about it, but he takes notes and this note said: "Ask about: Him being closer. Equipment. Pilot. Anything we can use to land in this area. Non-tower strips." Mr. Brumfield explains this note by saying this was when we were trying to make a deal with Mr. Hawkins to get a bust into this area so that the DEA could get credit for it. To which I can only

answer in the -- in great restraint,, "Horsefeathers!" This is a document in the hand of the defendant tied to the fact that he called Dale White three times -- that he called Dale White to find out Rapheal Aguilar's home telephone number in Mexico, all which occurred on Tuesday before the -- Wednesday before the escape and two calls on Friday before the escape and an airplane came to Little Rock the day of the -- after the escape and picked up Mr. White and was gone.

There was a newspaper of November 2, Sunday,, found on the front seat of the Lincoln when it was picked up. There were fingerprints in that car of both Mr. White and Mr. Costales.

The last kind of facts to talk about have to do with the money that Mr. White had; about the fact that Mr. Brumfield sat in the conference room by his own ad-

mittance for ten minutes when the last time he saw Mr. White he was ten seconds away from the doorway to the conference room; about his claimed lack of any knowledge about who Mr. Costales were or was or how he fitted into the puzzle. I simply find that to be incredible. The sweatsuit business and the money: When Mr. White was on the stand, I asked him about the money that he used to buy the hamburger and the coke. And he said it came from his sock and that you were allowed to keep cash money in city jail. "I just accumulated -- I had -- I just had accumulated it." And the source of the money he was asked? Answer: "I believe that I came with it. I had Sixty-two dollars when I arrived there." Question: "And when you were being asked about the jumpsuit?" "Yes, sir." Question: "How were you dressed?" "In a

sweatsuit." "Did you normally have that on?" You said: "Yes." "'Yes. It was chilly up there.' Is that what you answered?" He said: "That's correct." You said in answer to Mr. Stroud's question, he asked you a question: "Where did the jogging suit come from?" Then you answered first: "I brought it with me." He then said: Question: "You did not remember that at the Snyder trial." Then the next thing: "Did you have it before you were arrested?" Then you said: "I don't recall." "I think you said you had Nike jogging shoes?" You answered: "That's correct." Question: "Now clear it up for me." Answer: "Yes, sir." Question: "Did you own that jogging suit in Florida and bring it with you or was it brought with you at the city jail after you were incarcerated in the city jail? It had to be one or the other. It

just didn't materialize in the property room." Answer: "No, sir." Question: "Or in any other way. How did the jogging suit get in your possession in the Federal holding cell at the Shreveport City Jail?" Answer: "The jogging suit, I believe, was brought to me as a part of -- I think that I owned it before." Question: "You think that you owned it before? Now, Mr. White, you know how that rings with me." Answer: "Okay." Question: "It sounds like you are really trying to answer it but being careful about your answer if I can be blunt about it?" Answer: "Let me give you -- no, sir." Question: "You either own a jogging suit and you know that you own it or you don't. It's a simple question. It's a simple question. Now, sir, --" Answer: "The jogging suit was brought to me by Mr. Brumfield in the city jail and

put in my property." Question: "After you arrived in Shreveport from Florida?" Answer: "That's correct." "All right." "Sir, the jailer gave it to me after that." Question: "Did Mr. Brumfield from time to time furnish you with spending money or cash money to use or for whatever purpose you use it for in the city jail?" Answer: "I came with my own."

Mr. -- it is interesting to note in passing that Mr. Brumfield said in answer to a question or in part of the interview with the Marshal that he gave Mr. White four or five twenty dollar bills in the presence of the city jailer. There was apparently no lost motion from the time that the escape began until Mr. White arrived in Arkansas. Once he left the vicinity of the jail, he was able to gain transportation out of this area; to get

him out of the country simply by going to Mr. Brumfield's house and getting in the Lincoln Continental and going to Little Rock. The arrangements for transportation beyond Little Rock from a non-tower strip to North Little Rock Municipal Airport had been laid on by whom? This Court finds it was by and with the assistance of Mr. Brumfield.

In order to find Mr. Brumfield guilty of conspiracy, this Court has got first in count one: He's charged with conspiracy. In order to find him guilty of conspiracy, the Government must have proved to beyond a reasonable doubt that Mr. Brumfield and at least one other person entered into an agreement to commit the escape of Garvin White and that second, that Mr. Brumfield committed at least one overt act in furtherance of that agreement. That those findings are

made necessary not only by the state of the law but by a Fifth Circuit decision in the United States versus Wilson. Then from the Middlebrooks case, it says: "There is rarely any direct evidence of an agreement to join a criminal conspiracy and thus did the defendant's assent can be inferred from the act which furthered thee conspiracy's purpose." Furthermore, "a common purpose or plan may be inferred from a development and a collocation of circumstances." That's from the Maletosta case on banc in the Fifth Circuit quoting from Glazer versus The United States. "On the subject of the type of evidence we are faced with, the law is that the supporting evidence may be direct or circumstantial and we do not discriminate against sufficiently probative evidence because it is indirect." That's a question from the

United States versus Richards. "Because no one has a window to a man's mind, knowledge must often be proved by indirect evidence." The evidence before this Court overwhelmingly supports the inference that the defendant was an active, voluntary participant in the conspiracy to free Garvin Dale White from custody. Those actions on his part are numerous.

Let's see what had to happen. Any escape, you've first got to have a man with a desire, with a drive that wants out of that jail. Well, that's Garvin Dale White in spades. Second, you've got to have some way to hide from or to divert the jailer's view of what goes on or you can't get out. Third, you've got to have civilian clothes when you get outside so as to camouflage your true identity. Fourth, you need to have some

way to get away from the city jail or the area of the jail, either on your own feet in your own jogging shoes or with some other conveniently located transportation. You've got to have, fifth, some money to meet incidental expenditures and talk to people on the telephone to help you. And, sixth, you've got to have time and transportation to get out of the immediate area of the search for you, i.e., to get out of the Shreveport-Bossier area. The facts found by this Court showed involvement of Jimmie Brumfield with respect to every element except the first one. He did not give Garvin Dale White any drive necessary to cause him to want to get out of jail. I think that's built in that man. But the jailer, Dickson, was diverted by the call to Mrs. Brumfield that he, Brumfield, placed. Snyder was a co-conspirator with White

and with Brumfield and part of the plan was for him to be undressed when Jenkins came to get them. The distractions I found were so effective that Jenkins was still at the door waiting for Snyder and Dickson was still on the telephone when Garvin Dale White was long gone from the police building. He was able to get out of the building unnoticed because he had on a civilian jogging suit, furnished to him by Mr. Brumfield. Mr. Brumfield's truck, for whatever reason and however it happened to be mobile, was there at the disposal of Mr. White. He found the defendant's house, if he didn't know how to get there. And a key, the use of another vehicle and his briefcase and other matters which were left at the defendant's house for him to pick up should he get there.

And he had the money to call on the

telephone and talk to the people in Mexico. Either he brought sixty-two dollars to Shreveport or Mr. Brumfield's testimony is true that he gave him twenty dollar bills, four or five of them. Under Middlebrooks and under the Maletesta decisions, those actions by Mr. Brumfield lead to the inference that there was a common plan between at least Mr. Brumfield and Mr. White to effect Mr. White's escape and that Mr. Brumfield assented to it. In addition to the factors that I discussed, there was some other circumstances. The visits with Mr. White on the several occasions that night prior to the escape and the fact that he met both with Snyder and with White for an extended period of time on Thursday night and an extended period of time on Friday night; there were the two prisoners talking to the lawyer in the conference room

on the jail, in the jail, you will -- I will recall from the Snyder trial that Mr. Snyder said they started to leave on Friday night when the elevator opened and there were so many people around the booking desk but if you credit Mr. Snyder's testimony they decided not to go. But Mr. Brumfield met with them beginning at 8:35 on Friday night and beginning at 7:40 P.M. on Thursday night in the conference room.

Another co-conspirator involved in these charges against Mr. Brumfield is Mr. Costales. And Mr. Costales was in Shreveport for the better part or with Mr. Brumfield for the better part of ten days. He left Shreveport on Tuesday afternoon the twenty-eighth and the evidence or fingerprint evidence and other evidence shows that Mr. Costales was in Little Rock with Mr. White by the

following Sunday night. And that Mr. Costales was on the telephone to Mr. Billy Brumfield several times during the week following the escape dealing with the return of the automobile.

The evidence shows beyond a reasonable doubt that an agreement existed andd that Mr. Brumfield agreed with it. The evidence shows to me beyond a reasonable doubt that the overt acts committed by the defendant were committed by the defendant in furtherance of the conspiracy. The indictment lists overt acts that applied to this defendant that Brumfield drove the pickup truck to the jail. After arriving at the jail, he asked the jail officials for permission to see White. The third one was that Mr. White used Brumfield's truck to leave the jail vicinity and drove it to jump Brumfield's residence and that White drove the

Brumfield's Lincoln from that residence to Little Rock. There are -- these are the overt acts listed -- some of the overt acts listed in the indictment. The evidence of these acts is undisputed virtually. The inference that these acts were in furtherance of the conspiracy are absolutely inescapable. The Government has proved the two elements of the charge of conspiracy and Mr. Brumfield is found to be guilty of the charge of conspiracy in count one.

It's somewhat anticlimatic to discuss count two, but it's required that I deal with both counts of this indictment. In count two, Mr. Brumfield is charged with aiding and assisting the escape of Garvin Dale White. There are two elements. First, that Mr. White was a Federal prisoner and that he escaped from custody and second, that Mr. Brumfield

aided and assisted in that escape. The fact of the escape from custody is not in doubt. In light of the findings of facts and conclusions reached already by this Court, there is no doubt that Mr. Brumfield aided and assisted in that escape. Without the moves made by Mr. Brumfield, I don't believe Mr. White could have made good his escape. There were multiple steps involved in the plan and many of those steps involved were those taken by the defendant. The evidence shows beyond a reasonable doubt that Mr. Brumfield is guilty of the offense charged in count two.

Mr. Brumfield, in his own testimony, is responsible for some of the credibility questions particularly those involving the relationship of Randy Costales. He was also asked -- he was asked such questions as: "Who introduced

you to Randy Costales?" To which Mr. Brumfield answered: "I don't recall." He could have said: Well, it might have been Dale White because I was with him or it might have been Garvin Dale because I was with him and we were in Florida and that's where all this started. He could have said that, but he simply said: "I don't recall." He gave no explanation for how he met Randy Costales and brought him home and established him in his office residence to sleep and to stay together with him for ten days. It just doesn't ring true. The sweatsuit, he was asked: "Where did it come from?" "I don't have any idea where it came from", he said. Yet the man who received the sweatsuit clearly said: "Mr. Brumfield brought it to me." And it's hard to separate the white from the chaff in this case because so many stories were told by

so many people that it took me until this afternoon to try to come to grips with it and I had to draw a picture of the month in question before it came clear. He was asked: "Did Mr. -- to Mr. White if I needed the help to get out?" And Mr. Brumfield answered: "He didn't need my help." And he said -- he was asked: "Garvin Dale White was never at your home?" "No. I wouldn't allow him there." Well, if he wouldn't allow Randy Costales there--if he wouldn't allow Garvin Dale White there, but he allowed Garvin Dale White's either good friend or family relation to stay right there in his family group in Kirk Lane and then to visit the other family members in Franklinton and to ride up and down the length and breadth of Louisiana together. How does that ring true? And the short answer: It doesn't. It is only in con-

clusion that I say that the credibility choices that the Court was required to make, many of them were in favor of the defendant but many of them were not. And the decision of the Court is he is found guilty beyond a reasonable doubt of the offenses charged both in count one and count two.

And this Court is adjourned until nine-thirty tomorrow morning.

The defendant is notified of his right to appeal this Court's decision and that knowledge will be made fully aware to you at the time of sentencing which will occur on Friday, July 16.

All rise.

MR. MARSHAL: All rise.

THE COURT: The pre-sentence of the Court will begin as soon as Mr. Simmons gets after it. But sentencing, Mr. Simmons, will be on the sixteenth of July.

(WHEREUPON, the Court was adjourned.)

(END OF TRANSCRIPT)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

UNITED STATES OF AMERICA, :

Plaintiff, :

-versus- : CRIMINAL

JIMMIE A. BRUMFIELD, II : NUMBER

Defendant. : 82-50004-01

CERTIFICATE OF REPORTER

I, Bill Hogan, do hereby certify that the above and foregoing transcript, consisting of pages 1 through 44, is a full, true, correct and accurate transcript of the proceedings, as requested to be transcribed, had in the ruling of the above cause on June 14, 1982, before the Honorable Tom Stagg, Judge of said Court, as reported and transcribed by me as Official Court Reporter for the above Court.

Bill Hogan, Official Court Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

UNITED STATES OF AMERICA, :

Plaintiff, :

-versus- : CRIMINAL

JIMMIE ARNOLD BRUMFIELD,II: NUMBER

Defendant : 82-50004

TRIAL COURT: HONORABLE TOM STAGG, JUDGE

TRANSCRIPT: REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS IN ABOVE CAUSE

LOCATION: UNITED STATES DISTRICT COURTHOUSE, SHREVEPORT, LA

TRIAL DATE: JULY 16, 1982

TRANSCRIPT FILED: _____

TRANSCRIPT ORDERED BY: ARAX T. BRUMFIELD, ATTORNEY

BILL HOGAN, RPR

Official Court Reporter

United States District Court

P. O. Box 441

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FOR THE DEFENDANT:

Mr. J. Stacey Freeman, Attorney

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BE IT REMEMBERED that in the United States District Court for the Western District of Louisiana, Shreveport Division, in the United States Courthouse, in the City of Shreveport, Parish of Caddo, State of Louisiana, on the 16th day of July, 1982, the above entitled cause came on for sentencing before the Honorable

Tom Stagg, Judge of said Court, and the proceedings on the sentencing are in the words and figures following, to-wit:

MR. STEWART: Good morning, Judge.

THE COURT: Morning.

MR. STEWART: Did you wish to take up sentencing prior to some introduction or admissions?

THE COURT: We're going to do the --

MR. STEWART: Sentencing?

THE COURT: -- sentencing.

MR STEWART: Your Honor, before the Court is United States versus Jimmie A. Brumfield. The matter is before the Court this morning for sentencing. Mr. Brumfield is present in Court with retained counsel, Mr. J. Stacey Freeman. The Government is ready to proceed.

THE COURT: Mr. Freeman, I need to ask as a matter of form that you and Mr. Brumfield both have read the pre-sentence report?

MR. FREEMAN: Yes, sir.

THE COURT: All right.

As the pre-sentence report has been studied in preparation for thee scheduled sentencing event, I need to ask if there are any factual area -- errors other than those which display the Government's theory of the case. Are there any factual errors in this pre-sentence report that need to be called to my attention?

MR. FREEMAN: No, sir. Not that I know of, other than the, you know, of course, the Government's --

THE COURT: And, Mr. Brumfield, did you perceive in this report any erroneous material that the Court should know about before the sentencing procedure proceedings?

MR. BRUMFIELD: It seems to be accurate as regards my personal history and the rest of the information, I, you know, the remarks that you made towards the

Government's version, of course, we'll accept.

THE COURT: I understood -- I understood the -- that I needed to say that because of from your statement, you don't believe that what's in the Government's case or what's in the Court's findings are correct. And I understand that.

MR. BRUMFIELD: Yes, sir.

THE COURT: Now, I have and I acknowledge the receipt of a number of letters written on behalf of Mr. Brumfield from various friends and neighbors and clients. And in addition to these written statements on behalf of Mr. Brumfield, Mr. Freeman, do you have any other statement that you --

MR. FREEMAN: No, sir.

THE COURT: -- would like to make on behalf of Mr. Brumfield?

MR. FREEMAN: No, sir.

THE COURT: And, Mr. Brumfield, do you have anything in the way of elocution that you would care to say on your own behalf?

MR. BRUMFIELD: Your Honor, I think the things that I would say, you've probably heard many, many times. I believe you understand my situation, you know. I have really nothing new that I could tell you. I just hope you understand; well, that's my position.

THE COURT: Well, let me preface the formal sentencing act by stating that you said you understand my situation. I will trust that you understand mine.

MR. BRUMFIELD: Yes, sir.

THE COURT: The trial that was held and the findings that came from that file -- from that trial are fresh in my mind. I am as convinced today as I was on that day that you were involved in the escape

of Garvin Dale White. It may have been misguided to a greater extent that I believe it was. I know it was misguided to a certain extent. And for that act on your part which allowed your client to escape from the city jail, I am required to sentence you. This is only the seccond time that I can recall that a lawyer stood where you stand. The other lawyer had more grievous charges against him than you do but it's especially painful for a man who grew up in admiration of lawyers and for his life's work followed the footsteps of lawyers. And it's especially painful, but I think it needs to be done. And it's ordered that you be committed to the custody of the Attorney General for a term of two years. And that on the second count, the imposition of sentence on count two is suspended and you shall be placed on five years super-

vised probation to begin at the end of your confinement sentence.

And you are ordered, if you wish to avail yourself of that, voluntarily to surrender yourself at the designated institution at nine o'clock on July 26. I will recommend to the Bureau of Prisons and to the probation people that they strive for something nearby, the Federal prison camp at Texarkana. It is the closest institution and place of confinement that I think would allow you access to your wife and to your baby on a more regular basis than would a institution more further removed from Shreveport. And if that can be done, Mr. Maples; if not, I wish you would let me know so that I could make some stronger representations and a recommendation.

The appeal process now begins. I have a packet of information, an item

from Gilbert Ganucheau, the clerk of the Fifth Circuit with instructions for using the notice of appeal form; the voucher payment forms in case Mr. Freeman isn't by your side, the Court will appoint counsel for the perfection of an appeal if you choose that route.

And, Mr. Terry, if you'll please hand these to mr. Freeman.

Mr. Freeman, is there anything else that you need to have covered at this time?

MR. FREEMAN: No, sir.

THE COURT: Mr. Stewart, does the Government have anything else at this time?

MR. STEWART: Nothing, Your Honor.

THE COURT: We will briefly recess --

MR. BRUMFIELD: Your Honor, --

THE COURT: Yes, sir.

MR. BRUMFIELD: There's one small thing that I needed if I could ask for it and that is a certified copy of the conviction andd the sentencing.

THE COURT: Yes, sir.

MR. BRUMFIELD: There's a piece of personal business that I must attend to regarding that.

THE COURT: A certified copy of the -- of what was said here this morning or --

MR. BRUMFIELD: No, sir. No, sir. Just the --

THE COURT: -- or what the ruling from the Bench was?

MR. BRUMFIELD: Just the conviction, sir, and just the sentencing.

THE COURT: Mr. Brumfield, can I -- you said it's for a personal matter --

MR. BRUMFIELD: Yes, sir. I would rather explain it to you between us.

(Conference)

THE COURT: All right. We'll take care of that. Bob Terry will -- I'll get Bob Terry to attend to it.

That's all. This Court is in recess for ten minutes.

MR. MARSHAL: All rise.

(Recess)

(END OF TRANSCRIPT)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

UNITED STATES OF AMERICA :

Plaintiff, :

-versus- : CRIMINAL

JIMMIE ARNOLD BRUMFIELD,II: NUMBER

Defendant : 82-500

CERTIFICATE OF REPORTER

I, Bill Hogan, do hereby certify that the above and foregoing transcript, consisting of pages 1 through 8 is a full, true, correct and accurate transcript of the proceedings, as requested to be transcribed, had in the sentencing of the above cause on July 16, 1982, before the Honorable Tom Stagg, Judge of said Court, as reported and transcribed by my as Official Court Reporter for the above Court.

Bill Hogan, Official Court Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

UNITED STATES OF AMERICA	CRIMINAL
VERSUS	NUMBER
JIMMIE ARNOLD BRUMFIELD, II	82-50004-02

PETITION FOR HABEAS CORPUS

The Petition of Jimmie Arnold Brumfield, II, a resident andd domiciliary of Bossier Parish, Louisiana, who respectfully represents:

1.

Jimmie Arnold Brumfield II was charged with and found guilty after a bench trial of Conspiracy to Assist in the Escape under 18 U.S.C. 371 and Aiding and Assisting in the Escape under 18 U.S.C. 752(1) of Garvin Dale White in the Indictment entitled United States of America vs. Jimmie Arnold Brumfield II, Criminal No. 82-500004-01/02. The date

of conviction was June 14, 1982.

2.

Petitioner was sentenced to two (2) years at the Federal Correctional Institute in Texarkana, Texas and five years active probation by the Honorable Judge Tom Stagg, on the 16th of July 1982.

3.

Jimmie Arnold Brumfield II was originally incarcerated at the Federal Correctional Institute in Texarkana, Texas. He was placed on parole July 26, 1983, successfully completed his parole July 26, 1984 and is presently serving a 5 year probated sentence with the United States Department of Probation and Parole, Western District of Louisiana, Shreveport Division.

4.

By being on parole, Petitioner can-

not leave the Western District of Louisiana without permission from his parole officer. He must file a report with probation and parole once a month, and the Department of Probation and Parole has the authority to supervise his life, both personal and business. Although, Jimmie Arnold Brumfield II is not physically incarcerated behind bars, he is in fact incarcerated within the Western District of Louisiana. Besides the actual sentence of Probation, Petitioner's rights have been impaired ass follows:

a. As a convicted felon, he is unable to possess firearms.

b. Because of his conviction, he was disbarred from the Practice of Law by the Louisiana Bar Association, State of Louisiana, and is unable to make a living at a Profession that took him seven (7)

years to obtain.

c. He is unable to obtain employment in any area in which he was trained such as practicing law, the Insurance Business, the Banking and Financial Business or any that he can use his mind. Because of the Stigma of his conviction, and the pressure, both above and below board placed on him, most companies are afraid to have anything to do with Jimmie Arnold Brumfield II.

d. He is unable to travel freely. Each time he leaves the Western District of Louisiana, he must obtain permission from his Probation Officer, and when he returns, he must remember to check in.

5.

Jimmie Arnold Brumfield II appealed the decision, however, after he arrived at the Federal Correctional Institute, it was made clear to him that if he

proceeded with the appeal, his chances of parole would be greatly reduced and that life at the prison would be made much more difficult. Pursuant to those warnings, Jimmie Arnold Brumfield II dismissed his appeal.

6.

Petitioner believes that he is being held unlawfully for the following reasons:

a. He was denied his right to a jury trial. Pressure was placed on him and his wife for him to waive his right to trial by jury. Petitioner was asked and pressured to sign his Jury trial waiver well in advance of trial, wherein, Garvin Dale White and Donald Snyder signed their Jury Trial Waivers the mornings of their trials.

b. Petitioner was not afforded his right to be tried by an impartial trier

of facts. The Honorable Judge Tom Stagg was convinced that Jimmie Arnold Brumfield II was guilty before the first witness was ever sworn. Petitioner has reason to believe the following:

1. It was impossible for Judge Tom Stagg to be completely unbiased because of the extreme publicity that the case had, both with the news media, and among the Shreveport and Bossier Bar Association.

2. Jimmie Arnold Brumfield II's conviction was very important to both Brian Joffrion and A. M. Stroud III. Judge Tom Stagg is and was personal friends with both Brian Joffrion, the United States Marshal, and A. M. Stroud III. Mr. Joffrion sat in the courtroom the entire time the case was being tried as a case worker. Then toward the end of the trial, he was allowed to testify

as a rebuttal witness against Jimmie Arnold Brumfield II.

3. Judge Tom Stagg had read the transcript of the State court proceeding entitled State of Louisiana versus Jimmie Arnold Brumfield and Arax T. Brumfield. The preliminary examination transcript contained hearsay statements and other inadmissible statements.

4. Judge Tom Stagg was the trier of fact in the proceedings entitled United States of America versus Garvin Dale White, wherein Garvin Dale White was convicted of Simple Escape.

5. Judge Tom Stagg was the trier of fact in the proceedings entitled United States of America versus Donald Snyder wherein, Donald Snyder was charged in connection with the Garvin Dale White escape. Donald Snyder was charged with both Conspiracy to Assist in the Escape

under 18 U.S.C 371 and Aiding in the Escape under 18 U.S.C. 752(1) of a Federal Prisoner, namely Garvin Dale White.

Judge Tom Stagg stated in his ruling that he believed prosecution's witness, Judy Philpot who testified that when she visited Donald Snyder in Texarkana, Donald Snyder told her that Jimmie Brumfield helped in the escape of Garvin Dale White. A transcript of the Donald Snyder trial was ordered and paid for nearly one year ago, but has not been delivered. Jimmie Arnold Brumfield II was given no opportunity to cross examine Judy Philpot, denying him his right to Due Process and the right to confront and cross-examine the witnesses against him. Mrs. Philpot was available for the Donald Snyder trial the preceding Tuesday, and would have been available for the Jimmie Arnold Brumfield trial. It might be

noted that Jimmie Arnold Brumfield II was in no way warned about the Philpot testimony prior to the Snyder trial, and by that time, had no way to subpoena her to his trial. Even if Jimmie Brumfield had subpoenaed her, he would have had to call her as his witness, still denying him the right of cross examination. Judge illegally took judicial notice of the Snyder trial in the Brumfield trial.

6. In Judge Tom Stagg's oral reasons for finding Jimmie Arnold Brumfield II guilty, he referred to the Donald Snyder trial stating:

"It is also true that Mr. Donald E. Snyder, who was tried in this countroom Monday and Tuesday of last week....was the cell mate of Mr. White at the time of the escape and he was convicted by this court of the charges that he was involved in the conspiracy and abetting and as-

sisting in the escape of Mr. White, and that conviction was based on evidence that Mr. Snyder's delaying tactics in order to distract the jailer and give Mr. White the opportunity to get to the jail elevator andd out of the building."

page 18 of Judge Stagg's opinion:

"I found as a fact in his trial that he was in his undershorts because it was part of the scheme to delay the jailer at the jail door and he was convicted on those facts, and those facts have not changed."

Judge Tom Stagg reasoned that Donald Snyder and Jimmie Arnold Brumfield II were co-conspirators, thus establishing a conspiracy. By establishing the conspiracy, he allowed hearsay testimony, which would have not otherwise been admissible, thus compounding the error.

7. Judge Tom Stagg cross examined

Garvin Dale White and successfully confused him concerning how he obtained the jogging suit and other items, thus putting himself in the position of advocate for the United States of America and not an impartial judge or trier of fact. Note page 34 of Judge Stagg's opinion wherein he noted that Jimmie Arnold Brumfield II furnished Garvin Dale White with a jogging suit. Also, all prisons sell jogging suits. Judge Tom Stagg never allowed the checking of Garvin Dale White's prison property sheet. Also note page 105 of the transcript of the preliminary examination in the proceedings entitled State of Louisiana vs. Jimmie Arnold Brumfield II.

"Q. How long had he been in the jogging suit?

A. As well as I can recall, ever since he came there.

Q. He never did put on the required prison uniform.

A. That's right.

Garvin Dale White wore the jogging suit at the Shreveport City Jail before Garvin Dale White saw Jimmie Arnold Brumfield II for the first time in the Shreveport City Jail.

Also, Jimmie Arnold Brumfield II is not responsible for what the prisoners wear. All other prisoners but Garvin Dale White were forced to wear regular uniforms. Garvin Dale White was treated like a celebrity by the jailers and allowed to wear whatever he wanted. The responsibility for proper clothing of the prisoners rests entirely on the jailers, not the prisoner's attorney.

d. Tom Snow and Jim Hawkins violated the rule of Sequestration. Before testifying, Tom Snow and Jim Hawkins were

in a hall, Jim Hawkins standing on one side and Tom Snow standing by a door on the other side of the hall. Tom Snow had a copy of the State court proceedings reviewing and discussing it with Jim Hawkins. The Rule of Sequestration was also violated by Brian Joffrion. He was allowed to sit through the entire trial as a "case worker," listening to all testimony. After nearly everyone testified, Mr. Joffrion was called as a rebuttal witness. Judge Stagg ruled in U.S. vs. Garvin Dale White that the case worker had to testify first, but testify no more after other witnesses testified.

e. A defendant is to be presumed innocent until proven guilty beyond a reasonable doubt. Judge Stagg was convinced that Jimmie Brumfield was guilty before he ever commenced the trial. Careful evaluation of his decision will

prove that he did not believe a word Jimmie Arnold Brumfield, Arax T. Brumfield or any of Defendant's witnesses said, but believed all prosecution witnesses, even though Tom Snow was caught in several inconsistencies. He held that Jim Brumfield did not represent Donald Snyder, even though the evidence is overwhelming that he did. Attached hereto is a fee contract wherein $2,600.00 was assigned to Jim Brumfield to cover his fee. A. M. Stroud was aware of Jimmie Arnold Brumfield's representation of Donald Snyder because Jimmie Arnold Brumfield II discussed Donald Snyder case with him. A. M. Stroud III allowed Judge Tom Stagg to believe that Jimmie Brumfield did not represent Donald Snyder and that Jimmie Brumfield had no reason to visit Donald Snyder other than to conspire in the escape of Garvin Dale White, when Mr.

Stroud knew that this was not so.

f. A prosecutor has a duty, both ethically and legally to inform the court and the defendant of any favorable information concerning the defendant's case. Shortly after the trial of Jimmie Arnold Brumfield II, an article was published in the National Bar Journal. Mr. Howard Skinner, the attorney appointed to represent Mr. White immediately after his capture, read the article. The article lined out the testimony of Garvin Dale White, wherein he described his escape and the fact that Jimmie Arnold Brumfield II did not aid in the escape. The Testimony of Garvin Dale White was the same as the story told to Mr. Skinner. Believing that this was relevant in Jimmie Arnold Brumfield II's defense, he called Carl Stewart, then the Assistant U. S. Attorney prosecuting the case.

Carl Stewart never contacted the defendant or the court with this information. A copy of the National Bar Journal report and the letter from Mr. Skinner is attached hereto and made a part hereof.

g. Jimmie Arnold Brumfield II was originally charged in the State Court for Aiding in the Escape of Garvin Dale White. He was required to post a $10,000.00 bond. The state court proceedings dragged on for a year, causing great financial hardship. He incurred attorneys fees and his law practice dwindled to practically nothing. This drove Mr. Brumfield into poverty. Then, after defendant and his family were financially and emotionally drained, charges were dropped in State court and reinstated in Federal Court. No formal procedures of transfer were utilized. At that time, Defendant was again arrested,

and, unlike most defendant's under similar circumstances, was required to post either a cash or surety bond of $10,000.00 requiring him again to pay a bondsman $1,000.00 in order to be released from jail. $2,000.00 for a bondsman may not seem like much money to most people,, but the Brumfield family, it was all the money in the world. At that time, the Federal Proceedings were rushed through, requiring defendant to spend more money on attorneys fees, and at the same time, completing the destruction of his law practice. The assistant U. S. Attorney, A. M. Stroud III, U. S. Marshal Tom Snow and U. S. Marshal Brian Joffrion took an active part in the State Court proceedings, being in constant contact with both Robert Gillispi and Paul Carmouche. (Note that A. M. Stroud III is first Assistant District Attorney for

Caddo Parish. By taking an active part in the State court proceedings, rather than immediately prosecuting the case in Federal Court, Assistant U. S. Attorney A. M. Stroud derived several advantages.

1. He did not have to worry about complying with the requirements of a speedy trial, since there was no Federal indictment handed down, so he could take his time to build his case.

2. He was made privy to information derived through a quite lengthy preliminary examination at the state court level.

3. He managed to completely drain the defendant and his wife both emotionally and financially so that defendant could not adequately defend his case when it came to Federal Court. As a result, Jimmie Arnold Brumfield II had to defend his case as a pauper. Defendant

was required to seek permission from Judge Stagg for all witnesses subpoenaed. In order to subpoena witnesses, Defendant had to tell Judge Stagg in advance what the witnesses would testify to and "how these witnesses would prove his innocence." Judge Stagg limited the number of witnesses defendant was able to subpoena.

h. The burden of proof for circumstantial cases is different in Federal Court than it is in State Court. In Federal Court, the prosecution must only prove that Defendant is guilty beyond any reasonable doubt. Under Louisiana law, the prosecution must eliminate any reasonable hypothesis. As can well be seen, the prosecution has a lesser burden of proof in Federal Court than it does in State Court. Defendant believes that not only did the prosecutor fail to prove him

guilty beyond a reasonable doubt, but, that he proved he was innocent beyond a reasonable doubt. He gave direct evidence that he did not aid in the escape of Garvin Dale White. The prosecution most certainly did not eliminate any reasonable hypothesis of innocence. By transferring the case from State Court to Federal Court, Defendant was given a much more burdensome task to defend.

i. There was no direct proof that Jimmie Arnold Brumfield II conspired or aided in the escape of Garvin Dale White, however, there was direct proof that he did not. The only person besides Jimmie Arnold Brumfield II who would know what really happened was Garvin Dale White, and Garvin Dale White testified that Jimmie Arnold Brumfield II did not conspire in or aid in his escape.

j. There is a legal presumption

that when a party fails to call a witness on his behalf, that witness would not testify on his behalf if he were called. The United States called Judy Philpot as a witness at the Donald Snyder trial, and they called the Jail elevator operator at the Garvin Dale White trial. These witnesses would both have been available for the Jimmie Arnold Brumfield trial, but were not called. It must be presumed that they would not have helped the prosecution's case. The prosecution succeeded in bringing Judy Philpot before Judge Stagg in the Donald Snyder trial, and did not have to subject her to cross examination in the Jimmie Arnold Brumfield trial.

k. All statements made by Jimmie Arnold Brumfield II while incarcerated in the Caddo Parish Jail should be suppressed. Jimmie Arnold Brumfield II

did not voluntarily give these statements in the Caddo Parish Jail to Brian Joffrion, Tom Snow, Jim Hawkins and other law enforcement officers. He was told by his attorney, Frank Harlow, that if he did not make the statement he would not be released from jail. Judge James E. Clark had already told Jimmie Arnold Brumfield's wife that if his attorney would contact him, he would reduce the bond. The statements made by Jimmie Brumfield at the jail were not recorded. Brian Joffrion took hand written notes and latter typed the notes. After Brian Joffrion listened to Jimmie Arnold Brumfield's testimony he took the stand and used his recollection of that meeting to discredit Mr. Brumfield. Judge Stagg specifically referred to Brian Joffrion's testimony in discrediting Mr. Brumfield. Jimmie Arnold Brumfield's account of what

was said at the meeting is totally different that Mr. Joffrion's account of the statements. Petitioner believes that Mr. Joffrion listened to the trial, and testified in such a manner to suit his purposes.

l. A foot note, that Jimmie Arnold Brumfield II was an experienced trial attorney of over five years experience, was, in 1980 little more than fiction. Jimmie Arnold Brumfield II graduated from L. S. U. Law School in May of 1977 and began practicing law in October of 1977. At the time of Garvin Dale White's escape, he had only practiced law for three years.

m. An adequate chain of evidence was not established between the notes introduced at trial as notes found in a brief case in the Lincoln Towncar when the Lincoln was recovered. Mover

believes that the notes were part of the Garvin Dale White file which was ordered returned to Judge Tom Stagg and motions were denied to ascertain what was in the file. Mover is not convinced that the notes were in fact found in the Lincoln used in Garvin Dale White's trip to the Airport.

n. All evidence found in the office of Jimmie Arnold Brumfield II and home of Jimmie Arnold Brumfield II (2920 and 2921 Kirk Lane) should have been suppressed. The U. S. Marshals, D.E.A. Agents, Shreveport Police and other law enforcement officers searched every file and every inch of the house and office, thus conducting an unauthorized and general search. See record for copies of the Search warrant. (Note that the search warrant was signed by U. S. Magistrate James Barton shortly after the escape).

The Federal government was involved in this case from the beginning.

7.

Defendant filed an appeal with the 5th Circuit Court of Appeal, but voluntarily dismissed the appeal because of the following reasons:

a. Lack of financial ability to pursue the appeal. Arax T. Brumfield, petitioner's wife, is presently the sole support of the family and is engaged in the practice of law in private practice. Any adverse publicity would hamper her ability to make a living.

b. While petitioner was in prison,, he was afraid that pursuing the appeal would hamper his chance of making parole. In fact, Petitioner had gone to his hearing, and because of a letter written by Carl Stewart demanding that he serve his sentence to completion, one board member

recommended that he be placed on parole after serving one year of his sentence. The other board member recommended that he serve his entire sentence until completion. The parole case was submitted to the entire board for decision. At that time, Petitioner decided that it would be in his best interest to drop the appeal. At the time, it was more important to be released from prison and be with his two year old daughter, than it was to prove his innocence.

c. Petitioner was placed on parole after his stay at the Federal Correctional Institute in Texarkana,, he was on parole for one yearand his is presently on probation for five years. He and his family were and still are afraid that any appeal would result in attempts to revoke his probation and additional harassment by the U. S. Justice Department. There

is an old saying "If the Feds want you, they'll get you"

d. After the two year ordeal with the State and Federal charges, and after a year of incarceration, my wife was not mentally or emotionally able to withstand further harassment or pressure. Petitioner was afraid any further proceedings would destroy both her mental and physical health.

8.

Representation for these proceedings:

a. Arraignment - Arax T. Brumfield, 2921 Kirk Lane, Bossier City, La.

b. Trial - J. Stacey Freeman, 1648 Benton Road, Bossier City, La.

c. Sentencing - J. Stacey Freeman, 1648 Benton Road, Bossier City, La.

d. Michael Fawer, 700 Camp Street, New Orleans, La.

JIMMIE ARNOLD BRUMFIELD II, being first duly sworn under oath, presents that he has subscribed to the foregoing petition and does state that the information herein is true and correct to the best of his knowledge and belief.

s/Jimmie Arnold Brumfield II

JIMMIE ARNOLD BRUMFIELD II

SWORN TO AND SUBSCRIBED to before me this the 17th day of April 1986.

s/Arax T. Brumfield

NOTARY PUBLIC

s/Arax T. Brumfield

ARAX T. BRUMFIELD

Attorney for Petitioner

2921 Kirk Lane

Bossier City, Louisiana 71112

(318) 746-7045

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

UNITED STATES OF AMERICA	CRIMINAL
VERSUS	NUMBER
JIMMIE ARNOLD BRUMFIELD II	82-50004-01/02

REPORT AND RECOMMENDATION OF MAGISTRATE

In accordance with the standing order of Honorable Tom Stagg, Chief Judge, filed with the Clerk of this Court on March 11, 1981, this federal habeas corpus action was referred to the undersigned Magistrate for review, report and recommendation.

On April 17, 1986, petitioner Jimmie Arnold Brumfield II, pro se, submitted to the Clerk of this Court his petition for habeas corpus pursuant to 28 U.S.C. A. 2255. In making his collateral attack upon his conviction and sentence,

petitioner Brumfield alleges that he was charged and found guilty after a bench trial of conspiracy to assist in the escape under 18 U.S.C. S.S. 371 and aiding and assisting in the escape under 18 U.S.C. S.S. 752(1) of Garvin Dale White in the indictment entitled "United States of America vs. Jimmie Arnold Brumfield II", Criminal No. 82-50004-01/02.

He further alleges that his conviction was June 14, 1982, and on July 16, 1982 he was sentenced to two (2) years at the Federal Correctional Institute in Texarkana, Texas and five (5) years active probation by Honorable Judge Tom Stagg. He further alleges that after being incarcerated in the Federal Detention Center, he was placed on parole July 26, 1983 and completed his parole July 26, 1984 and presently is serving a five (5) year probated sentence with the

United States Department of Probation and Parole, Western District of Louisiana, Shreveport Division.

The main thrust of petitioner's collateral attack on his conviction and sentence is that imposes a severe hardship upon him (formerly a practicing attorney) and his wife, who is a lawyer. He contends that inasmuch as he is on probation, there are many things which he cannot do because of his conviction and sentence.

Plaintiff Brumfield, as grounds for his attack on his conviction and sentence, makes numerous contentions of pretrial and trial errors, and the reason why he did not complete his appeal to the United States Court of Appeals for the Fifth Circuit after conviction. He further claims bias and prejudice on the part of Judge Stagg during the course of

his trial and admission of evidence and failure of the prosecution to call certain witnesses.

Pursuant to an order of this court on April 24, 1986,, and in accordance of Rule 4 of 28 U.S.C. S.S. 2255, the Clerk was directed to serve the United States Attorney for the Western District of Louisiana with a copy of petitioner's motion attacking his conviction and sentence. In accordance with Rule 5 of 28 U.S.C. S.S. 2255,, respondent, the United States, through an Assistant United States Attorney, on May 23, 1986 filed an answer denying the allegations of plaintiff, supported by a 25 page brief in response to plaintiff's 14 page petition and additional attachments.

One of the special defenses of respondent is that by perfecting his appeal with able and efficient counsel rep-

resenting him, and then abandoning that appeal, petitioner is prevented from making a collateral attack on his conviction and sentence. It further is argued that all of this could have been presented on appeal, but due to strategy of petitioner and his attorney, the procedure was not followed through and was abandoned. Cited by respondent are several cases, including United States v. Hanyard, 762 F.2d 1226 (5th Cir. 1985). This is further buttressed by United States v. Timmereck, 99 S.Ct. 2085 (1979) in which the court held that "Respondent could have raised his claim on direct appeal but did not, and there is no basis here for allowing collateral attack to do service for an appeal." Thus, the Supreme Court reversed the Sixth Circuit. Even though Timmereck petitioner entered a guilty plea, the same rule is ap-

plicable after conviction and sentence upon failure, without cause, in appeal of his case by presenting the same contentions which he now presents to this Court.

Petitioner Brumfield also contends that some of the pretrial statements and confessions he made should not have been admitted at trial. Further, he claims he was denied a speedy trial. This is similar to the recent case of United States of America v. McClure, 786 F.2d 1286 (5th Cir. 1986).

Petitioner also alleged in his numerous contentions that there were witnesses which the prosecution could have called but did not which was prejudicial to him. The record shows that petitioner had the same opportunity to call these witnesses in his behalf. No objection was made of this contention during his

trial, and further it is refuted in United States v. Inadi, ____ S.Ct. ____, 54 U.S.L.W. 4258, (March 10, 1986). The Supreme Court reversed the Third Circuit and held that an unindicted co-conspirator's statement may be introduced at trial and government was not required to produce witnesses, holding that Rule 801(d)(2)(E) of the Federal Rules of Evidence was applicable.

The answer and brief of respondent goes into great and minute detail as to the uncontested facts in this case, and refutes each contention presented by petitioner by citing numerous cases which are applicable. The answer and brief of respondent, United States of America, accordingly is adopted in toto by the undersigned Magistrate and made a part of this report and recommendation as Exhibits 1 and 2.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

JIMMIE ARNOLD BRUMFIELD II)

Petitioner)

vs.) CRIMINAL

UNITED STATES OF AMERICA) NUMBER

Respondent) 82-50004-02

MEMORANDUM BRIEF IN SUPPORT OF RESPONSE AND ANSWER OF UNITED STATES OF AMERICA TO PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY PURSUANT TO 28 U.S.C. 2255 FILED BY JIMMIE ARNOLD BRUMFIELD II

May It Please The Court:

ARGUMENT

I. The Motion For Habeas Corpus Relief Pursuant To 28 U.S.C. 2255 Should Be Denied.

STATEMENT OF THE CASE

District Court Proceedings

An indictment was returned by the Grand Jury in the Western District of Louisiana February 19, 1982, charging in Count I on or about November 1, 1980, that Randy Costales, a/k/a Randy Conn, Jimmie A. Brumfield, II and others did conspire to effect the escape and attempt to escape from the Shreveport City Jail, of Garvin Dale White, who was a federal prisoner transferred to the jail pursuant to a Writ of Habeas Corpus ad Testificandum, all in violation of 18 U.S.C. 751(a) and 18 U.S.C. 371. Count II charged Costales and Brumfield with wilfully aiding and assisting the escape of White from the Shreveport City Jail in violation of 18 U.S.C. 752(a). (Vol. 1,, pgs. 1-3)

After waiving trial by jury, Petitioner was tried before Honorable Tom Stagg, United States District Judge, Western District of Louisiana, and con-

victed on each count.

On July 16, 1982, petitioner was sentenced to custody for two years on Count I. Imposition of sentence was suspended on Count II, and Petitioner was placed on five years supervised probation upon the completion of the confinement sentence imposed on Count I. (Rec. pg. 351). Petitioner filed a Notice of Appeal August 10, 1982. By Motion To Dismiss Appeal filed November 15, 1982, by his attorney, Michael H. Fawer, same was dismissed by the Fifth Circuit. (Rec. pg. 129).

A Motion For Reduction Of Sentence was filed March 15, 1983 and denied. (Rec. pgs. 131, 133).

A Petition For Writ of Habeas Corpus, pursuant to 28 U.S.C. 2255 was filed April 17, 1986. By Memorandum Order, the Government was ordered to respond. (Rec.

pg. 135).

STATEMENT OF THE FACTS

Roy Jenkins, Assistant Superintendent for the Shreveport Jail, testified as to the events on Saturday, November 1, 1980, when Petitioner arrived at the jail at about eight or eight-thirty in the evening, asking to see Garvin Dale White. (Vol. I, pg. 22, line 13). Jenkins proceeded to the holding cells and opened the door, letting Garvin Dale White out, who walked down the hall. (Vol. I, pg. 23, line 14). Brumfield, who was at the booking area, asked the jailer to also bring another Federal prisoner,, Donald E. Snyder. Jenkins turned around to tell Snyder that Brumfield also wanted to see him. Snyder was in his underclothes. Jenkins asked him to put on his coveralls which he had in the sleeping area. The jail elevator operator then told Jenkins

that White who had been proceeding down the hall, had escaped. (Vol. I, pg. 24, lines 23-24). After Jenkins reported the escape to the radio operator, he informed Brumfield who responded, "they" will probably want to talk to me. (Vol. I, pg. 26, line 32).

The Assistant Jailer, Barbara Jean Dickson, stated that as Jenkins walked down the hall to get White and Snyder, Brumfield made a phone call and asked her to pick up the phone. Brumfield's wife was on the phone and wanted to talk to her about a succession. (Vol. I, pg. 53,, line 19). Previously, Brumfield had appeared at the jail almost every night to talk to White. (Vol. I, pg. 57, line 47).

Detective Terry Shields, Shreveport Police Department, upon learning of the escape returned to the Shreveport City

Jail. (Vol. II, pg. 99, line 12). Brumfield had prepared a written statement (G-11). (Vol. II, pg. 101, line 27). Brumfield was not under arrest or a suspect. He was requested to give a recorded statement in the detective's office to Shields and Detective Owens. (Vol. II, pg. 103, lines 34-38).

A copy (G-34) of the recorded statement was in accord with Brumfield's written statement (G-11). He stated he had come to the jail that night to talk with White and bring him something to eat. He said he went over to the booking desk, signed in and called his wife, whom he said had been working on some type of succession for one of the jailers. Brumfield said he asked the jailer to pick up the telephone and talk to his wife. After the jailer did this, Brumfield said he left the counter or the desk and

walked into the conference room. He claimed he learned of the escape after one of the jailers came to him and told him of it. Brumfield then left the jail about four minutes later. (Vol. II, pg. 104, lines 42-46, pg. 105, lines 47-48). He then returned and reported his truck was stolen. Brumfield approached Shields in the front part of the office with keys in his hand, "And he used some slang terms and basically said that his name was mud." Brumfield stated he had driven the vehicle to the jail that night. (Vol. II, pg. 105, line 50, pg. 106, lines 51-53). The keys that Brumfield handed to Detective Shields were duplicate keys, with Brumfield explaining he had thrown the original keys away. (Vol. II, pg. 109, line 67). Brumfield telephoned his wife to pick him up. (Vol. II, pg. 110, line 72). He told her

not to have a flat tire on the way over as he did not need anything else to go wrong. (Vol. II, pg. 111, line 78).

When Brumfield's wife arrived, she was informed the truck was stolen. However, she had the original factory keys. Brumfield had earlier told the detectives he had thrown the factory keys away. She stated she had gotten the factory keys off of the counter in her house. (Vol. II, pg. 115, line 90). These factory keys were noted by the detective to have a sticky substance on them as if they had been taped. (Vol. II, pg. 115, lines 93). Officer Owens had observed Mrs. Brumfield drive up to the police station in the truck which Petitioner had previously just reported stolen. (Vol. II, pg. 114, line 86). When Petitioner was informed the truck he had reported stolen was parked outside,

he folded his arms on the desk and laid his head in his arms, then raised his head with watering eyes. (Vol. II, pg. 123, lines 124-127).

Brian Joffrion, United States Marshal, had among his responsibilities, the care, custody and control of Federal prisoners within the Western District of Louisiana. (Vol. II, pg. 200, line 4). On November 5, 1980, he interviewed Petitioner Brumfield in the Caddo Parish Courthouse, first advising him of his constitutional rights pursuant to Miranda. Graham Rogers and Frank Harlow, attorneys for Brumfield were present and consentedd to the interview. Marshal Joffrion made notes which he used later in the day or the next day to type up a coherent report of that interview. (Vol. II, pg. 200, lines 5-11, pg. 201, lines 12-17). There was no doubt but that the

interview was freely and voluntarily given by Brumfield with the consent of both of his attorneys who were present at the time the interview was reduced to the Marshal's notes. (G-44A & B). The Trial Judge ruled that the notes could be used by Joffrion in his testimony as he recognized them to have been made by him at the time of the taking of the statement. (Vol. II, pg. 203, line 30 at pg. 205).

The notes taken during the interview by Joffrion with Brumfield, were read as follows:

A "10-5-80. Jim Brumfield. 11:12 A.M., Caddo Parish Jail, Caddo Parish Courthouse. Randy Costales, Randy Costales came to Louisiana, the Shreveport-Bossier area, several days after White arrived. C is not a pilot known to have driven Porches and black Cadillacs. Identified 3-9-66-101-88 as Costales.

Costales was picked up with White at Indian River. Purpose of Costales' presence in Florida. He chaffeured Brumfield. In Shreveport to visit with. Brumfield accompanied Costales several times to visit White. Previously Brice. Last name unknown. Brother-in-law of White visited White. Costales visited White both in and out of Brumfield's presence. There were at least two visits, possible more. Costales only one staying at Brumfield office. He stayed in front room with double bed. He had use -- had use of Silverado pickup truck, white four-wheel drive, big tires, magnesium fin wheels, chrome grill, albatross. Acquired four to six months ago. Truck registered to a fellow named Chatham. Chatham had truck in the name of Sullivan. Chatham came through and signed over some papers. It seems like I

picked up truck. I drove truck every day. Saw some pumps and trucks. They were in there when Costales drove it back. Jim visited White, drove vehicles alternately. Conn, Costales, used all three vehicles. Costales accompanied Brumfield to Franklinton. Introduced him as Costales. Stayed at Billy's house. Dale White, Garvin Dale White's son, drove Brumfield to Florida airport. ID 3965-10180.

Friday, 10-31-80, Costales departed. Costales mentioned Boulder, Colorado. Arax took Costales to airport, regular airport. Costales rode something on outside of box. Purpose of frequent visits with Jim at City Jail. Brumfield, Dale White would call Brumfield. Brumfield and the Whites were working on some plea bargains. Dale White had contact with father and knew of people involved. Dale

would feed information to father and Brumfield to in turn to give to DEA agents. Short socks, may have taken Levis. Doesn't know where sweatsuit came from. Brought in wine. Costales once went with Brumfield to jail in truck prior to going to Franklinton. Costales had Arax pick him up. He in turn was called by Brumfield to retrieve the truck. Was left in lot. Too, went to Franklinton. White had never been to Brumfield's home. How did White know where truck was? Don't know. I can conject I'd park in same place. Why not report Lincoln's -- Lincoln stolen. S tuation unpleasant. Warren McClawson was to have reported Lincoln stolen. Garvin Dale White did not have permission to drive Lincoln. If he took it, he stole it. ID, Sullivan, 396710180, later identified as Hanafin. Brumfield

provided cash to Garvin Dale White, four or five twenties in front of jailer. Don't remember giving Garvin Dale White any money in Mansfield. Don't ever remember having any money. Purpose of Randy coming to Shreveport: He was to meet with Garvin Dale White. He was going to take truck to Arizona. Opal White is mother of Garvin Dale White. Parker, Arizona is one residence. Jim said he did give Dale White a thousand dollars. Brumfield got money from Opal White who turned it over to Dale White. Dale drove Brumfield to Mansfield Saturday morning. Dale was not allowed to see father. All property was given to Costales to care for except a little bag jewelry in a little bag for Costales." (Vol. II, pg. 212, line 34).

Daniel P. Merriam, officer with the Shreveport Police Department recalled

seeing Brumfield's pickup truck on the top lot of the City Hall and Murphy Street side of the police station at about nine-thirty p.m. When he left work at six a.m. on the next day, October 26, 1980, the pickup truck was still parked where he had originally seen it. (Vol. II, pg. 154,, lines 8-10, pg. 156, line 19). He observed the pickup on October 25, 28, 29, 30 and 31 in the same spot. He was off duty October 26, 27, 1980. (Vol. II, pg. 156, lines 19-25). Shreveport Police Officer William Randy Rogers also observed the white pickup parked on the cop lot at the same time as Merriam made his observations. (Vol. I, pgs. 140-13).

Special Agent James O. Hawkins, DEA, on November 2, 1980, executed a search warrant at 2921 Kirk Lane, Bossier City, Louisiana. (Vol. II, pg. 218,

lines 7-10). He found one plastic bag containing miscellaneous pieces of identification for Michael Sullivan, and a brown chart bag containing numerous aeronautical charts of southern United States, Caribbean and South America. (Vol. II, pg. 219, line 14). On November 7, 1980, he received a telephone call from Brumfield advising he wanted to wash his hands of this matter and he had several items of clothing and personal belongings at his residence belonging to Randy Costales which he wanted Hawkins to pick up. (Vol. II, pg. 220, line 21). These items were received into evidence ass G-36-37, 47).

Billy Arnold Brumfield, brother of Petitioner, testified that Randy Costales came to his house with petitioner in October 1980. Costales stayed at the brother's house for approximately three

days. Petitioner was driving a new Lincoln Continental. (Vol. II, pg. 236, lines 4-11, pg. 237,, line 14). Subsequently on November 3, 1980, Billy Arnold Brumfield received a phone call from a person identifying himself as Garvin Dale White. (Vol. II, pg. 239, lines 23-24). White told him he had Petitioner's car. Billy Arnold Brumfield asked him if he was the fellow that had broken out of jail. He stated he was that person. White asked about Petitioner, and Billy Arnold Brumfield responded that he was in jail, as White had broken out of jail and they put his brother in his place. (Vol. II, pg. 24, line 26). White let Billy Arnold Brumfield talk to Randy Costales during the phone conversation. Costales and White wanted Billy Arnold Brumfield to get Petitioner's car which was at the Little Rock, Arkansas Municipal Airport

with the keys in the gasfiller cap. (Vol. II, pg. 243, lines 27-31). White said he would send him some money to make the trip to recover the car. (Vol. II, pg. 244, lines 38-39,pg. 245, line 40). Three days later he received a money order (G-32) which he turned over to the U. S. Marshal's Service. (Vol. II, pg. 245, lines 46-47).

Inspector Lucian Bramel, U. S. Marshal's Service, Little Rock, Arkansas, located Petitioner's car at the Little Rock, Airport. The 1979 Lincoln Continental was backed into the parking lot located immediately in front of the main hangar. (Vol. II, pgs. 266-269).

Hershel S. Garner, U. S. Marshal's Service, Little Rock, Arkansas, located the keys in the small door where the gasfiller was located. (Vol. II, pg. 274, lines 10-11).

It was stipulated that an expert fingerprint examiner witness, if called as a Government witness would testify that it was determined that the fingerprints of Randy Costales and Garvin Dale White were taken from items contained inside the 1979 Lincoln automobile. (Vol. II, pg. 298).

Inspector Tommy L. Snow, U.S. Marshal's Service, questioned Donald Snyder on November 1, 1980, as to the jailbreak by White. Snyder told Snow the only thing he could tell him was to check Brumfield's house. (Vol. II, pg. 171, line 18). Snow observed at about eleven-forty-five p.m. on November 1, 1980, there was a pick-up truck and Lincoln Continental parked in the driveway of 2920 Kirk Lane, next to Petitioner's residence at 2921 Kirk Lane. The Lincoln Continental drove away, then at about

twelve o'clock, the pick-up left. (Vol. II, pg. 176, lines 48-49).

When Snow requested Petitioner on January 7, 1981 to give handwriting exemplars, he said "no", but placed his hand on Snow's shoulder saying sit down, I'm going to tell you what happened that night. Snow did not initiate the conversation. (Vol. II, pg. 178, lines 64-65). Snow stated as to Petitioner's volunteered statement while not under arrest:

"A After we got inside the house, he proceeded to tell me his version of the events that night. He stated that and I quote "they" had made extra keys for his car -- for his truck, that when White escaped, he went down and found the extra keys that were taped to the truck. He drove to 2920 Kirk Lane, parked the truck in the driveway, went across the street to 2921 to obtain a briefcase and

some other property that he had left there; that while he was in 2921 Jimmie had called Arax to come pick him up; she backed out in the pickup and left and when White came out of 2921, he saw the pickup was gone so he went into 2920, got a set of keys that was laying on the counter, got in the Continental and drove away." (Vol. II, pg. 179, line 68).

The Government rested its case. (Vol. III, pg. 309).

Petitioner called Garvin Dale White as a defense witness, who admitted escaping from the Shreveport City Jail on the night of November 1, 1980. (Vol. III, pg. 327, line 41). He explained he went to the white pickup truck parked on the cop lot, retrieved a set of keys in a magnetic box which he knew the location of as he had previously owned it. (Vol. III, pg. 331, lines 49-50). He drove to

Petitioner's residence, crossed the street to his office, entered through a window and located his small caribou briefcase with low altitude charts in it. (Vol. III, pg. 339, lines 80-81, pg. 340, line 83, pg. 346, line 118). White then entered Petitioner's residence, finding keys to the Lincoln. (Vol. III, pg. 348, line 127). White then drove to North Little Rock, Arkansas, where two pilots from Mexico flew him away. (Vol. III, pg. 375, lines 240-243). White admitted at the time of his arrest in Florida, terminating his escape he was using an alias name David DeMarco. (Vol. III, pg. 381, lines 266-268).

Petitioner's wife, Arax Brumfield, first met Randy Costales on October 18, 1980 at 2920 Kirk Lane, Bossier City, Louisiana. He remained in the Shreveport area until October 28, 1980, when he left

by plane. (Vol. III, pg. 436, lines 10-14). Costales came to Shreveport to try to work on a deal to reduce some of White's jail time, so it would be less than life imprisonment. (Vol. III, pg. 437, line 18). Mrs. Brumfield was aware that Costales brought with him belongings of White, such as travel cases which were placed in the Brumfield's office located on Kirk Lane. (Vol. III, pg. 440, lines 36-38).

Mrs. Brumfield identified a set of keys to the pick-up truck which she lent to a neighbor to use to move some furniture. These keys were returned about a month later. This was the only set of keys she knew of that her husband had been using. (Vol. III, pg. 443, lines 58-62, D-3). Penny Frazier returned the set of keys to the Brumfield residence the Friday night prior to the escape.

(Vol. III, pg. 444, lines 64-67). On the weekend prior to the escape, the pick-up truck was left by Petitioner on the jail parking lot "Because it wouldn't work and we had gone to Franklinton, so we left it there." (Vol. III, pg. 444, lines 68-69).

Mrs. Brumfield testified that within three weeks prior to November 1, 1980, she discussed with Petitioner looking into a succession matter for jailer Barbara Dickson. On the night of the escape, Petitioner called her and placed Ms. Dickson on the phone to discuss the succession. (Vol. III, pg. 446, lines 83-84, pg. 447, lines 88-89). The next week she heard from Petitioner was when he called her to pick him up at the jail, stating, "--he said something to the effect that anything that can go wrong has gone wrong. Come pick me up." (Vol.

III, pg. 448, line 99). She left her house in the white pick-up truck with the set of keys Penny Frazier returned. (Vol. III, pg. 449, lines 105-107). When she arrived at the jail, Charley Owens asked her why her husband had reported the truck stolen whereas she drove up in it. (Vol. IV, pg. 454, line 132). She spent the night in jail.

Petitioner Jimmie Arnold Brumfield testified in his defense. He was contacted by White, who was in jail in Florida and requested to meet him. Petitioner met with White at the Federal Correctional Institute in Miami, remaining there two or three days. (Vol. IV, pg. 479, line 27). Petitioner met Chris Eulberg in Florida, having heated discussions concerning an airplane. (Vol. III, pg. 479, lines 29-30). Approximately two or three days after Petitioner returned

to Shreveport from Florida, White was transferred from Florida back to Shreveport. (Vol. IV, pg. 480, line 35). While in Florida, Petitioner received some of White's property from the prison authorities which he gave to Randy Costales. (Vol. IV, pg. 481, lines 41-42).

Petitioner, shortly after returning to Shreveport, Louisiana, arranged to represent White as to possible plea bargains in return for providing information. (Vol. IV, pg. 482, lines 48-49).

Petitioner stated on October 24, 1980 (Friday night), he went to the City Jail to see White. The pick-up would not start, therefore, he requested Niftali Rodriguez to repair it. After returning from Franklinton, on Monday night or at one o'clock Tuesday morning, he drove the pick-up from the jail parking lot to his residence. (Vol. IV, pg. 509, lines 110-

111). On Saturday, November 1, 1980, White asked him to meet him at the jail as he could only get out of his cell to make a phone call. (Vol. IV, pg. 510, line 116). Petitioner drove to the jail in the pick-up, parked it and used the elevator to get to the booking desk. (Vol. IV, pg. 511, line 122). Petitioner said he signed in at the desk, told jailor Jenkins he wanted to see White. He called his wife for the purpose of jailor Barbara Dickerson talking to her about a succession matter. (Vol. IV, pg. 512, lines 127-130). He further testified he was waiting for Jenkins to bring White out of his cell and saw White and Jenkins walking toward him. (Vol. IV, pg. 514, line 138). Petitioner went into the conference room. Jenkins entered, telling him White had just escaped. (Vol. IV, pg. 517, line 148). He

verified this with Jenkins. (Vol. IV, pg. 518, line 152). Petitioner went to the parking lot, finding the pick-up missing. He returned to the jail floor stating to Detective Shields, "I said something to the effect that my middle name was mud and that I had to report this truck missing." (Vol. IV, pg. 526, line 184). He claimed no explanation for his wife driving to the jail to pick him up in the pick-up truck shortly after he reported it missing. (Vol. IV, pg. 528, line 200, pg. 529, lines 201-202).

On cross-examination, Petitioner stated that on November 1, 1980, while in the jail after being advised of the escape, he wrote out a statement prior to anyone asking him for a statement. Later they asked him for a statement. (Vol. IV, pg. 556, lines 255-258).

The defense rested its case. (Vol.

V., pg. 632).

Deputy United States Marshal Tommy L. Snow testified as a Government witness, that on November 1 and the early morning hours of November 2, 1980, he stationed himself next to a market to observe the residence at 2921 Kirk Lane. He saw the Lincoln Continental leave that night with two people in it. (Vol. V, pg. 634, lines 3-6).

Brian Joffrion,, United States Marshal, testified on rebuttal that Petitioner had previously explained to him that the pick-up stayed on the jail parking lot for the reasons he and Costales went to the jail in it. When they arrived, Costales decided he did not want to go in and see White, so he called Arax Brumfield, who came and picked him up. When Brumfield completed his business, he couldn't find his keys, so he called Cos-

tales who came by and picked him up. The Marshal testified Petitioner did not mention anything about the truck being broken. (Vol. V, pg. 645, line 7, pg. 646, lines 8-9, pg. 652).

These are considered to be the operative facts together with those set forth in the argument section of this brief.

The facts as to the circumstances of the escape have been reviewed by the Fifth Circuit Court of Appeals in U.S. v. Snyder, 707 F.2d 139 (5th Cir. 1983). In the latter case, it was also stated in the decision the record is clear that both Snyder and Brumfield were deeply involved in White's escape attempt.

Petitioner's Habeas Corpus proceeding filed with this Court is an abuse of the writ, and should be dismissed. The Fifth Circuit stated in Sosa v. U.S., 550

F.2d 244 (5th Cir. 1977):

"Although the Supreme Court enforced the general rule against surrogate appeals in Sunal v. Large, 332 U.S. 174, 67 S.Ct. 1588, 91 L.Ed. 1982 (1947), the Court was careful to preserve the not inconsiderable number of exceptions to the rule, see 332 U.S. at 178-181 & nn. 6-13, 67 S.Ct. 1588, when "the writ has . . . been entertained either without consideration of the adequacy of relief by the appellate route or where an appeal would have afforded an adequate remedy', 332 U.S. at 178, 67 S.Ct. at 1591. The Court's catalogue of exceptions shows that the archetypal case for the application of the rule precluding collateral attack is when direct appeal has been foregone as a tactical maneuver. See 332 U.S. at 180-182, 67 S.Ct. 1588."

In Jones v. Estelle,, 699 F.2d (5th

Cir. 1983), the Fifth Circuit set forth a standard of review in abuse of writ cases:

"The standard under which the contention that a petitioner has abused the writ is to be decided was set out by this Court in its earlier decision in this case:

Under the decision of this Court in Paprskar v. Estelle, 612 F.2d 1003 (5th Cir. 1980), abuse of the writ for failure to assert a ground for relief in a prior petition exists only where that failure was due to inexcusable neglect or intentional relinquishment. (emphasis in original)."

Petitioner states the following reason for dismissing his appeal:

"Jimmie Arnold Brumfield II appealed the decision, however, after he arrived at the Federal Correctional Institute, it

was made clear to him that if he proceeded with the appeal, his chances of parole would be greatly reduced and that life at the prison would be made more difficult. Pursuant to those warnings, Jimmie Arnold Brumfield II dismissed his appeal." (Paragraph 5 - Habeas Motion, pg. 3).

This reason for deliberating bypassing the appellate process is incredulous, particularly when he was represented by Michael S. Fawer, known as a competent expert attorney in the field of criminal law. It would appear that awaiting the conclusion of the appeals of Garvin Dale White, (U.S. v. White, 748 F.2d 257 (5th Cir. 1984) and Donald Ray Snyder, (U.S. v. Snyder, 707 F.2d 139 (5th Cir. 1983), and then a considerable time, accrued as a tactical advantage to Petitioner not permitted to be a justifiable excuse for

not pursuing an appeal. To adopt Petitioner's reasoning which is preposterous, would allow other incarcerated prisoners to bypass the direct appeals route. In addition, Petitioner and his wife were both attorneys. Accordingly, there was abundant legal assistance to continue the appeal which he voluntarily chose to abandon. By way of summary, it can be said Brumfield failed to appeal his conviction, subjecting his case to charges of deliberate bypass, see Montgomery v. United States, 469 F.2d 148 (5th Cir. 1972), procedural default, United States v. Frady,, 456 U.S. 152, 166-68 (1982), and waiver off those non-constitutional claims which could have been raised on direct appeal, United States v. Hanyard, 762 F.2d 1226, 1230 n.1 (5th Cir. 1985). Accordingly, Petitioner's habeas proceedings should be

dismissed summarily.

In Paragraph 6 of his habeas proceeding, he sets forth unsupported vague conclusionary allegations. In section "a.", he alleges he was denied his right to a jury trial due to pressure placed on him by his wife. Contrary to this present assertion, the Waiver of Trial By Jury signed June 9, 1982, contains thereon the following statement of his retained attorney, J. Stacey Freeman:

"I, J. Stacey Freeman, Attorney and Counselor-at-law, represent that I am attorney of record for JIMMIE A. BRUMFIELD, II, Defendant herein; that prior to the signing of the foregoing waiver, the Defendant above named was fully advised as to the rights of an accused, under the Constitution and laws of the United States, to a speedy and public trial by jury, and further represent

that, in my opinion, the above waiver by the Defendant, JIMMIE A. BRUMFIELD, II, of trial by jury, is voluntarily and understandably made, and recommends to the Court that the waiver be approved." (Rec. pg. 105).

If such concrete statements in writing, contained in the Waiver of Trial By Jury, as made by Petitioner and his Attorney, could at this time, be disregarded as suggested by Petitioner, a precedent would be set where there would be no finality to criminal trials. The totality of the circumstances reflecting such a claim at this late date mitigates against acceptance, but that the claim be rejected as frivolous.

Also in Paragraph 6 of his habeas petition, it is alleged the Trial Judge was biased, therefore he was denied his right to a trial by an impartial trier of

fact. No motion was filed in the District Court for recusal of the Trial Judge on the basis of prejudice or bias.

Petitioner makes his allegations in his habeas corpus petition to this court under oath. Insofar as the allegations raise allegations of bias and prejudice, they are made too late in time and are patently without merit.

Appellant should have filed an Affidavit timely prior to trial as provided in 28 U.S.C. 144 nd 555(a) pursuant to a motion. The affidavit would, in the pretrial setting, have been judged as to sufficiency on the following test:

"1. The facts must be material and stated with particularity;

"2. The facts must be such that, if true they would convince a reasonable man that a bias exists;

"3. The facts must who the bias

is personal, as opposed to judicial, in nature."

See U.S. v. Miranne, 688 F.2d 980 (5th Cir. 1982).

The Trial Judge questioned Petitioner to clarify his testimony. (Vol. V, pgs. 611-628). Insofar as allegations are made, that the Trial Judge participated in questioning witnesses, there was no error. In U.S. v. Owens,, 453 F.2d 355 (5th Cir. 1971), the Fifth Circuit held it was the duty of the trial court to conduct an orderly trial and to make certain as far as possible, that there is no misunderstanding of the testimony of witnesses. Any questions eliciting answers from the witnesses in Petitioner's trial were for clarification purposes as permitted, there being no unfairness or impartiality in the trial court's conduct.

All allegations, as to the proceedings against Petitioner, causing emotional and financial draining, do not afford grounds for relief. All indications are that the proceedings caused stresses ordinarily associated with the trial of any defendant. As to expenses, Petitioner never demonstrated to the Court that he should have had an attorney appointed to represent him as a forma pauperis matter.

The rule of sequestration was not violated by United States Marshal Brian Joffrion called as a rebuttal witness. He was the Government's case agent and allowed to remain in the courtroom during trial. Garvin Dale White was in the custody of Marshal Joffrion at the time of the escape, and was within the exclusion of Rule 615, Federal Rules of Evidence, as his presence was essential to the

presentation of the case as a case agent whom the District Judge excluded from the rule of sequestration.

The allegation that the rule of sequestration was violated by Deputy United States Marshal Tom Snow and S/A Jim Hawkins, DEA, is not supported by facts, but only conclusionary allegations presented to this Court in the habeas motion. In addition, no prejudice is alleged, nor was the alleged violation of sequestration called to the attention of the Trial Judge. A failure to sequester witnesses is not grounds for reversal unless the party requesting sequestration can show prejudice. Government of Virgin Islands v. Edinborough, 625 F.2d 472 (3rd Cir. 1980).

On page 7 of the habeas writ,, it is alleged in a conclusionary allegation that the Trial Judge was convinced

Petitioner was guilty even before the trial began. Further, that the Trial Judge did not believe the Petitioner or his witnesses, but only the prosecution witnesses. The Trial Judge has the right to evaluate and assign credibility to trial witnesses. His decisions as to credibiity choices were thoroughly justified based upon the totality of the evidence adduced during the trial. Petitioner's guilt was proven beyond a reasonable doubt.

Petitioner's claims of pre-indictment delay by the Government are without merit. He claims that after state proceedings dragged on for a year and were dropped, the Government had charges brought before a Grand Jury which were rushed through. (Petitioner's Brief, pg. 8).

The indictment was returned February

19, 1982 in the United States District Court, Western District of Louisiana A plea of not guilty was entered February 26, 1982. Numerous pre-trial motions were filed, with trial beginning June 10, 1982 and ending June 14, 1982 with the Trial Judge finding Petitioner guilty on both counts. Sentencing occurred on July 16, 1982.

There is no evidence that there was any pre-indictment delay caused by the Government. The Fifth Circuit in U.S. v. West, 568 F. 2d 365 (5th Cir. 1978) stated the criteria set forth in U. S. v. Marion, 404 U.S. 307, 30 L. Ed. 2d 468 (1971) governs cases of establishing actual prejudice. Marion makes it clear that proof of prejudice is generally a necessary but not sufficient element of a due process claim, and the due process inquiry must consider the reasons for the

delay as well as the prejudice to the accused. In the case at bar, Petitioner has not crossed the threshold of demonstrated prejudice, nor shown that its pretermission is warranted by some violation of the Petitioner's constitutional right to due process other than mere delay in indictment. No showing has been made by Petitioner that there was any loss of witnesses, witness memory loss demonstrating any prejudice.

Petitioner's contentions that his rights to a speedy trial as protected under 18 U.S.C. 3161 premised upon the federal authorities cooperating with the state authorities with respect to Brumfield's initial arrest on state charges, the date of his arrest on those state charges being the triggering date for the speedy trial limitations has been clearly been ruled upon by the Fifth Cir-

cuit.

Contrary to this argument, the Fifth Circuit has clearly stated that a state arrest does not trigger the time provisions of the federal speedy trial act. U.S. v. Wilson, 657 F.2d 755 (5th Cir. 1981), U.S. v. Mejias, 562 F. 2d 435 (2d Cir. 1977). In U.S. v. Phillips, 569 F. 2d 1315 (5th Cir 1978), the Fifth Circuit adopted the reasoning in U.S. v. Mejias, supra.

Petitioner argues without merit that the Government not calling Judy Philpot or the jail elevator operator as witnesses at his trial, it can be presumed their testimony would have been unfavorable. There was no reason for the Government to have called either witness at Petitioner's trial. Where witnesses are equally available to the prosecution and the defendant, no unfavorable in-

ference can be drawn from the Government not calling the witnesses. Shurman v. U.S., 233 F.2d 272 (5th Cir. 1956).

Petitioner, in his habeas motion, argues that his statements, while incarcerated in the Caddo Parish Jail, should be suppressed as not having been voluntarily made to U.S. Marshall Brian Joffrion, Tom Snow and S/A Jim Hawkins. His allegation is that, "He was told by his attorney, Frank Harlow, that if he did not make the statement, he would not be released from jail. Judge James E. Clark had already told Jimmie Arnold Brumfield's wife, that if his attorney would contact him, he would reduce the bond...

It is patently obvious that Petitioner's first statement, written out in the jail immediately after the escape, was on his own volition. When Deputy

Marshall Shields asked him for a statement, he handed it to him while not under arrest. (G-6_. Then he voluntarily gave a recorded statement. (G-7) The recorded statement tracked his written statement.

Petitioner's second statement to the United States Marshall, a few days later, was also voluntary and while not under arrest. Petitioner's third statement was unsolicited and volunteered to Deputy Marshall Snow on January 1, 1981, at the time he was requesting handwritten exemplars, was also given while not under arrest.

It is well-settled that an unsolicited remark by an accused, not in response to interrogation, does not fall within the rule of Miranda v. Arizona, 384 U.S. 436 (1966). U.S. v. Carpenter, 611 F. 2d 113 (5th Cir. 1980). Likewise,

Petitioner's statements to Shields and the Marshal were not subject to Miranda.

Petitioner did not dispute that he was not in custody when these statements were given when he testified at the suppression hearing.

Pursuant to a Search Warrant executed November 2, 1980, by S/A Hawkins, DEA, there was recovered from the 1978 Chevrolet Silverado Pickup truck (1) a certificate of registration for a 1978 Chevrolet in the name of Mike Sullivan, and (2) one black address book. (Rec. pg. 23). The allegation that the items were not kept properly, prior to use at trial as evidence, is unfounded and not supported by fact. Accordingly, the vague conclusionary allegation should be rejected. In addition, the Trial Judge properly rejected contentions that search warrant affidavits were invalid as same

contained lies and inaccuracies. (Rc. pg. 226). Franks v. Delaware, 438 U.S. 154. (1978). There were no allegations of deliberate falsehood or of reckless disregard for the truth, accompanied by an offer of proof. Petitioner's allegations, as to the search warrants and execution thereof as set forth in his habeas writ, should be rejected as being without merit.

CONCLUSION

For the foregoing reasons, the contentions of Petitioner should be rejected as being unfounded and completely without merit. Particularly, the writ should be dismissed as it is a deliberate attempt to bypass a direct appeal from his conviction which he abandoned pursuant to the motion of Michael Fawer, his retained counsel.

Respectfully submitted,

UNITED STATES OF AMERICA

By: _____

JOSEPH S. CAGE, JR.

United States Attorney

_____

D. H. PERKINS, JR.

Assistant United States

Attorney

CERTIFICATE

I hereby certify that a copy of the foregoing Response and Answer of United States of America To Petition for Writ of Habeas Corpus by a Person In Federal Custody Pursuant to 28 U.S.C. 2255 filed by Jimmie Arnold Brumfield II and Memorandum Brief in Support of Response and Answer was mailed postage prepaid and certified to Arax T. Brumfield, 2921 Kirk Lane, Shreveport, Louisiana, 71112, attorney for petitioner.

Shreveport, Louisiana this the 22nd day of May, 1986.

D. H. PERKINS, JR.
Assistant U.S. Attorney
3B12 Federal Building
500 Fannin Street
Shreveport, Louisiana
(318) 226-5284

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

UNITED STATES OF AMERICA

VERSUS CRIMINAL NO. 82-5-0004-02

JIMMIE ARNOLD BRUMFIELD II

JUDGMENT

For the reasons stated in the Report and Recommendation of the Magistrate previously filed herein, and after an independent review of the record, including written objections filed by the petitioner, having determined that the Magistrate's findings are correct under the applicable law;

IT IS ORDERED that the application for writ of habeas corpus filed by petitioner Brumfield be DISMISSED.

THUS DONE AND SIGNED at Shreveport, Louisiana on this the 6th day of August,

1986.

JUDGE TOM STAGG, CHIEF JUDGE

Judgment entered 8-7-86

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

UNITED STATES OF AMERICA CRIMINAL NUMBER

VERSUS 82-500004-01/02

JIMMIE ARNOLD BRUMFIELD II

NOTICE OF APPEAL

OF JUDGMENT DISMISSING

PETITION FOR HABEAS CORPUS

TO THE 5TH CIRCUIT COURT OF APPEALS

NOW INTO COURT, through undersigned counsel,comes and appears Jimmie Arnold Brumfield II, defendant above named appeals to the United States Court of Appeals for the 5th Circuit from the Judgment of the Honorable Judge Tom Stagg Dismissing and Denying his Petition for Habeas Corpus entered in this Court on the 7th day of August, 1986.

ARAX T. BRUMFIELD

ATTORNEY FOR JIMMIE ARNOLD

BRUMFIELD II

2921 Kirk Lane

Bossier City, Louisiana

71112

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the above and foregoing has this day been delivered to the United States Attorney's Office, 3rd Floor Federal Building, 500 Fannin St., Shreveport, Louisiana 71112.

ARAX T. BRUMFIELD

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

UNITED STATES OF AMERICA

APPELLEE NO. 86-4624

versus

JIMMIE A. BRUMFIELD

APPELLANT

MOTION TO SUPPLEMENT TRANSCRIPT

NOW INTO COURT through undersigned counsel, comes and appears JIMMIE ARNOLD BRUMFIELD II, appellant in the above and foregoing who with respect represents:

1

Jimmie Arnold Brumfield II is appealing from a Judgment Dismissing a Petition for Writ of Habeas Corpus in the Western District of Louisiana, Shreveport Division.

2

The entire transcript of his trial has been forwarded to the court of ap-

peals.

3

The Honorable Judge Stagg took judicial notice of facts contained in both the United States of America vs. Garvin Dale White CR 81-50056 and United States vs. Donald Snyder trial,
NO. 81-50061. Both of these cases have been up before this Honorable Court of Appeals and decisions rendered by this court.

4

Appellant feels that it is essential for the equitable consideration of his case that the Court of Appeals consider in addition to the Brumfield transcript, the Garvin Dale White transcript and the Donald Snyder Transcript, including all exhibits. Part of the Donald Snyder record is a copy of the transcript from State of Louisiana vs. Jimmie A. Brum-

field.

5

Because both the above and foregoing cases have been appealed to this court, transcripts have already been typed. Jimmie Arnold Brumfield has already paid for the Donald Snyder transcript.

WHEREFORE, Appellant, Jimmie Arnold Brumfield II prays that this honorable court order that the record be supplemented by including the entire transcript and record from the Donald Snyder trial and the Garvin Dale White file.

ARAX T. BRUMFIELD
Attorney for Appellant
2921 Kirk Lane
Bossier City, Louisiana
71112

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE ABOVE AND FOREGOING has this day been mailed to the United States Attorney, Western District of Louisiana, Shreveport Division.

Bossier City, Louisiana this the 11th day of September, 1986.

_____

ARAX T. BRUMFIELD

UNITED STATES COURT OF APPEALS

FOR THE 5TH CIRCUIT

UNITED STATES OF AMERICA

Appellee

versus APPEAL NO. 86-4624

JIMMIE ARNOLD BRUMFIELD II

OPPOSITION TO MOTION TO SUPPLEMENT TRANSCRIPT AND EXTENSION

MAY IT PLEASE THE COURT;

United States of America, Appellee opposes the motion to supplement transcript with the transcripts in the trials of Garvin Dale White and Donald Ray Snyder, both of whom have been convicted and said convictions affirmed by this Court. See, U.S. v. White, 748 F.2d 257, (5th Cir. 1984) and U.S. v. Snyder, 707 F. 2d 139, (5th Cir. 1983). The trial Judge decided that guilt of Appellant Jimmie Arnold Brumfield, II upon the facts and evidence proven at his trial.

Accordingly, the record should not be supplemented or the extension granted. IOn addition, Appellant did not raise in the District Court a contention that the Trial Judge decided is guilt on evidence in the White and Snyder cases. The rule is well established that an appellate court will not review an issue raised for the first time on appeal unless the trial court has committed plain error. See U.S. v. Spears, 671 F. 2d 991, 992 (7th Cir. 1981); Fed. R. Crim. p. 52(b) and U. S. vs. McLeod, 608 F. 2nd 1976, (5th Cir. 1979).

Signed this the 16th day of September 1986.

D. H. PERKINS, JR.
Assistant U. S. Attorney
3B12, Federal Building
500 Fannin St.

Shreveport, Louisiana 71101

(318) 226-5284

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA

Appellee

versus APPEAL NO. 86-4624

JIMMIE ARNOLD BRUMFIELD II

RESPONSE TO OPPOSITION

TO MOTION TO SUPPLEMENT

TRANSCRIPT AND EXTENSION

MAY IT PLEASE THE COURT

Were the facts as D. H. Perkins states,defendant would truly have no complaint. All of the rights and privileges guarantted under the U. S. Constitution would have been scruplously

Examination of the records shall reflect differently:

A. U. S. v. White as overturned be because the counsel for White who was Brumfield, may not have truly defended White, but may

have had an interest in protecting Brumfield. Now it is urged that Brumfield may have been harmed because the same judge heard all three cases involved violating all rights guaranteed under the United States Consituation. Remember, impartial trial under the U. S. Constitution - due process, etc.

B. U. S. v Snyder. Here, the judge took judicial notice of this case in the Brumfield decision without notice to defendant in the Judgment of Conviction. Remember, Right to Cross Examine witnesses against you, presump - tion of innocence until proven guilty.

Mr. D. H. Perkins points out plain error and review of the transcript makes

it glaring error.

Attached hereto and made a part hereof is a copy of the transcript of the Honorable Judge Tom Stagg, wherein he took Judicial Notice of the White and Snyder trial, which is made a part hereof. Please note the highlighted areas.

RESPECTFULLY SUBMITTED

ARAX T. BRUMFIELD

Attorney for Jimmie A. Brumfield

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing has this day been delivered to Mr. D. H. Perkins, Jr., Attorney for the United States of America by placing said document in the United States mail and addressing it to 3B12

Federal Building, 500 Fannin St., Shreveport, Louisiana 71101.

Bossier City, Louisiana this the 23rd day of September 1986.

ARAX T. BRUMFIELD

QUOTES FROM TRANSCRIPT WHICH WAS ATTACHED TO RESPONSE TO OPPOSITION TO MOTION TO SUPPLEMENT TRANSCRIPT AND EXTENSION

another attorney, Mr. Graham Rogers.

Mr. White, the Court finds as a fact and it has been stipulated so it's not really necessary really to find it that Mr. White was a Federal prisoner when he escaped on November 1, 1980, having been

housed in the city jail pursuant to a writ of this Court and that it's easy to me to find that he walked out of the city jail on November 1, 1980. Of course, this court was the trier of fact on that charge of escape for which Mr. White was convicted on December 14, 1981.

It's also true that Mr. Donald E. Snyder, who was tried in this Courtroom on Monday and Tuesday of last week or Tuesday and Wednesday rather, of last week, was the cellmate of Mr. White at the time of the escape and he was convicted by this Court on charges that he was involved in the conspiracy and abetting and assisting in the escape of Mr. White. And that conviction was based on evidence of Mr. Snyder's delaying tactics in order to distract the jailer and to give Mr. White the opportunity to get to the jail elevator and out of the build-

ing.

One of the questions in this case then is whether Mr. Brumfield had a part to play in this same scenario which has been played out in this Courtroom now for the third time. Before the date of the escape on November 1, the testimony shows that Mr. Brumfield was contacted by Mr. White's mother and she stated that Mr. White had been apprehended in Florida, Berra Beach, I think; and asked Mr. Brumfield to consider to represents him, instructed Mr. Brumfield to negotiate the fee with Mr. White. Mr. Brumfield went to Florida to confer with White and while he was there, he met Randy Costales for the first time, who had been with Mr. White at the time of his arrest in Florida. And he met with Dale White who is the son of Garvin Dale White whom Mr. Brumfield knew from the days of this rep-

resentation of Mr. White while Mr. White was in the Mansfield Jail. I recall that Mr. Brumfield or someone of Mr. White said that his son was brought to the jail but the folks in Mansfield wouldn't let the son see Mr. Garvin Dale White, but I remember that the fact of it is that Mr. Brumfield already knew Dale White but he met Randy Costales in Florida for the first time.

I have dozens of edge tabs and other markers to keep me to certain bits of testimony so if I seem to you to wander, it is, in fact, true that I am trying to put this together in as

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man may well have been in his undershorts because it was more comfortable. I found as a fact in his trial that he was in his undershorts because it was a part of the scheme to delay the jailer at the jail

cell door, and he was convicted on those facts. And those facts have not changed since Tuesday's trial or last week until this week's trial.

Anyway, when he got to the first floor, Mr. White calmly walked out of the building. He said it was not calm, that his heart was racing; but he went to the pickup which he recognized as having formerly belonged to himself and that he had some keys hidden in that truck underneath--in a magnetic keyboard underneath the toolbox in the back of the pickup. This explanation could as easily be true as untrue. He said he had the vehicle specially fixed up for his girlfriend and it was to haul a speedboat and that he hid keys under the toolbox and he also hid keys by taping a set to the radiator pipe. One can only wonder if he was giving that truck to his

girlfriend, why did he hide keys in it? Well, nevertheless, that has nothing to do with this case except he said he had hidden keys in the pickup truck. It is to be noted that Mr. Brumfield left that truck on the parking lot for

page 38

your own feet in your own jogging shoes or with some other conveniently located transportation. You've got to have, fifth, some money to meet incidental expenditures and talk to people on the telephone to help you. And, sixth, you've got to have time and transportation to get out of the immediate area of the search for you, i.e., to get out of the Shreveport-Bossier area. The facts found by this court showed involvement of Jimmie Brumfield with respect to every element except the first one. He did not give Garvin Dale White any drive neces-

sary to cause him to want to get out of jail. I think that's built in that man. But the jailer, Dickerson, was diverted by the call to Mrs. Brumfield that he, Brumfield, had placed. Snyder was a co-conspirator with White and with Brumfield and part of the plan was for him to be undressed when Jenkins came to get them. The distractions I found were so effective that Jenkins was still at the door waiting for Snyder and Dickerson was still on the telephone when Garvin Dale White was long gone form the police building. He was able to get out of the building unnoticed because he had on a civilian jogging suit, furnished to him by Mr. Brumfield. Mr. Brumfield's truck, for whatever reason and however it happened to be mobile, was there at the disposal of Mr. White. He found the defendant's house, if he didn't know how

to get there. And a key, the use of another vehicle and his briefcase and other matters which were left at the defendant's house for him to pick up should he get there.

And he had the money to call on the telephone and talk to the people in Mexico. Either he brought sixty-two dollars to Shreveport or Mr. Brumfield's testimony is true that he gave him twenty dollar bills, four or five of them. Under Middlebrooks and under the Maletesta decisions, those actions by Mr. Brumfield lead to the inference that there was a common plan between at least Mr.. Brumfield and Mr. White to effect Mr. White's escape and that Mr. Brumfield assented to it. In addition to the factors that I discussed, there was some other circumstances. The visits with Mr. White on the several occasions that night prior to

the escape and the fact that he met both with Snyder and White for an extended period of time on Thursday night and an extended period of time on Friday night; there were the two prisoners talking to the lawyer in the conference from on the jail, in the jail, you will--I will recall from the Snyder trial that Mr. Snyder said they started to leave on Friday night when the elevator opened and there were so many people around the booking desk but if you credit Mr. Snyder's testimony they decided not to go. But Mr. Brumfield met with them beginning at 8:35 on Friday night and beginning at 7:40 p.m. on Thursday night in the conference room.

Another co-conspirator involved in these charges against Mr. Brumfield is Mr. Costales. And Mr. Costales was in Shreveport for the better part or with

Mr. Brumfield for the better part of ten days. He left Shreveport on Tuesday afternoon the twenty-eighth and the evidence or fingerprint evidence and other evidence shows that Mr. Costales was on the telephone to Mr. Billy Brumfield several times during the week following the escape dealing with the return of the automobile.

The evidence shows beyond a reasonable doubt that an agreement existed and that Mr. Brumfield agreed with it. The evidence shows to me beyond a reasonable doubt that the over acts

end of quotation from transcript.

UNITED STATES COURT OF APPEALS

Fifth Circuit

Office of the Clerk

January 6, 1987

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 86-4624 - USA vs. Brumfield

Enclosed is a copy of the Court's decision this day rendered in the above case. judgment has this day been entered in accordance therewith pursuant to Rule 36 of the Federal Rules of Appellate Procedure. Rules 39, 40 and 41, FRAP and Local Rules 39 and 41 govern costs, petitions for rehearing and mandates. A petition for rehearing must be filed in the Clerk's office within fourteen (14) days from this date. Placing the petition in the mail on the 14th day will not suffice. Criminal Appeals. Local Rule 41 provides

that "A motion for a stay of the issuance of a mandate in a direct criminal appeal filed under FRAP 41 shall be granted simply upon request. Unless the petition sets forth good cause for stay or clearly demonstrates that a substantial question is to be presented to the Supreme Court, the motion shall be denied and the mandate thereafter issued forthwith."

Court-Appointed Counsel Cases. This Court's plan under the Criminal Justice Act provides that in the event of affirmance or other decision adverse to the party represented, appointed counsel shall promptly advise the party in writing of the right to seek further review by the filing of a petition for writ of

certiorari with the Supreme Court and shall file such petition if requested to do so in writing by such party.

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk
By: s/Betty G. Martinez
Deputy Clerk

Enclosure

cc: Mr. Arax T. Brumfield
Mr. D. H. Perkins, Jr.

OP-JDT-1
Rev. 11/86

FIFTH CIRCUIT STATEMENT ON PETITIONS FOR REHEARING OR REHEARING EN BANC

NECESSITY FOR FILING

It is not necessary to file a petition for rehearing in the Court of Appeals as a prerequisite to the filing of a petition for certiorari in the Supreme Court of the United States.

PETITION FOR PANEL REHEARING

A petition for rehearing is intended to bring to the attention of the panel claimed error's of fact or law in the opinion. It is not to be used for reargument of the issue previously presented or to attack the court's well settled summary calendar procedures. Petitions for rehearing are reviewed by panel members only. Four copies of all petitions for rehearing shall be filed.

EXTRAORDINARY NATURE OF SUGGESTIONS FOR REHEARING EN BANC

A suggestion for rehearing en banc is an extraordinary procedure which is intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion which directly conflicts with prior Supreme Court or Fifth Court precedent. Alleged errors in the determination of state law, or in the facts of the case (including sufficiency of the evidence), or error asserted in the misapplication of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc.

THE MOST ABUSED PREROGATIVE

Suggestions for rehearing en banc are the most abused prerogative of appellate advocates in the Fifth Circuit.

While such suggestions were filed in 13% of the cases decided by this circuit last year, less than 1% of the cases decided by the court are reheard en banc; and most of the rehearings granted resulted from a request for en banc consideration by a judge of the court initiated independent of any suggestion.

PETITION FOR REHEARING EN BANC

The form, contents and number of copies of the suggestion are set out in Local Rule 35 copied on reverse side.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 86-4624

Summary Calendar

UNITED STATES OF AMERICA Respondent-Appellee,

versus

JIMMIE ARNOLD BRUMFIELD, II Petitioner-Appellant.

Appeal from the United States District Court for the Western District of Louisiana (D.C. No. CR-82-50004-02)

(January 6, 1987)

Before POLITZ, WILLIAMS, and JONES, Circuit Judges.

POLITZ, Circuit Judge:*

We review the dismissal of a petition for habeas relief under 28 U.S.C.

S.S. 2255. Finding neither clearly erroneous finding of fact nor error of law, we affirm.

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Initialed: HAP 12-19-86, JBW 12-22-86, EAJ 12-31-86

Background

On the evening of November 1, 1980, attorney Jimmie Arnold Brumfield, II visited his client, Garvin Dale White, a federal prisoner temporarily confined to the Shreveport City Jail. Brumfield had

been visiting White very frequently, almost on a daily basis. The jailer first took White to the conference room and then turned to get another inmate requested by Brumfield, Donald E. Snyder. As the jailer stepped out of view, White walked quickly past the assistant jailer who was on the telephone speaking, at Brumfield's request, to Brumfield's wife, also an attorney. White entered the empty jail elevator, descended to the ground floor, walked out of the jail/police station/city hall onto the parking lot, got into Brumfield's pickup truck, drove to Brumfield's law office, secured the keys to Brumfield's Lincoln Continental, drove to the Little Rock, Arkansas airport, there met Randy Costales, and promptly departed. White was arrested nearly a year later in Florida.

Advised of the escape, Brumfield im-

mediately and voluntarily gave the police a written statement. Later he gave a recorded statement which essentially tracked this earlier writing. Brumfield walked outside, found his pickup gone, returned inside, reported his vehicle stolen and called his wife to come get him. When Mrs. Brumfield arrived at the station she was driving the purportedly stolen pickup, using the original set of keys which Brumfield had just told the police he previously had thrown away. Mrs. Brumfield had taken the keys from the counter in their home. When informed that his wife had just driven up in the "stolen pickup," Brumfield, seated at a desk, laid his head in his arms.

Testimony established that Randy Costales, a friend of White's, had been staying with the Brumfields and that Brumfield had taken notes concerning

landing aircraft at Little Rock airport.

Brumfield was indicted on two counts: conspiracy to effect the escape of White in violation of 18 U.S.C. SS 751(a) and 351, and aiding and abetting that escape, 18 U.S.C. SS 752(a). He was convicted after a bench trial and received a prison sentence of two years on one count and five years probation on the other. He noticed but did not pursue a direct appeal. White and Snyder were separately tried.

Long after completion of the jail term Brumfield filed the instant SS 2255 petition, contending that: (1) he was denied his constitutional right to trial by jury; (2) his trial was constitutionally infirm because witnesses violated the rule of sequestration; (3) he was denied his constitutional right to a speedy trial because of the delay between

the offense and the federal indictment; (4) his fourth amendment rights were violated by an illegal search; (5) he was not given Miranda warnings before giving a statement; (6) the evidence was insufficient to support a conviction; and (7) the trial judge was not impartial.

The magistrate recommended dismissal because Brumfield had no right to collaterally attack his conviction and because no contention raised had merit. The trial court summarily adopted the magistrate's report and dismissed the petition.

Analysis

At the threshold we observe that a collateral attack may not "do service for an appeal." United States v. Timmreck, 441 U.S. 780, 784 (1979) (quoting Sunal v. Large, 332 U.S. 174, 178 (1946)). More specifically, "habeas will

not be permitted to sustitute for an appeal when the choice to seek habeas relief is made in order to seize some legal or tactical advantage. . . ." Sosa v. United States, 550 F.2d 224, 248 (5th Cir. 1977). Despite the government's contention to the contrary, we find insufficient reason to conclude that Brumfield's decision to dismiss his direct appeal was designed to secure an advantage over the government. United States v. Caceres, 745 F.2d 935 (5th Cir. 1984). We therefore consider the merits of the appeal, as did the magistrate and district court.

1. Jury trial.

Brumfield first contends that he was denied his constitutional right to trial by jury because he was pressured to waive that right. We find in the trial record a clear and unequivocal waiver of

jury. The SS 2255 pleading makes a contrary conclusional statement but fails to allege any details as to why, when, how, and by whom lawyer Brumfield was strong-armed. This contention is without merit.

2. Violation of sequestration order.

The witnesses were placed under the rule of sequestration. Fed.R.Evid. 615. Brumfield contends that his trial was constitutionally infirm because Brian Joffrion, United States Marshal, was in the courtroom before he testified, and because Deputy Marshal Tom Snow and DEA agent James Hawkins discussed the case "in the hall" before testifying. Neither of these acts constitutes reversible error. Joffrion was excused from the rule as the case agent, and there is no showing of prejudice from the alleged Snow/Hawkins conversation, United States' v. Capua, 656 F.2d 1035 (5th Cir. 1981).

Permitting the witness to testify was within the trial court's discretion. This assignment lacks merit.

3. Speedy trial.

Immediately after the escape the state district attorney began an investigation which was pursued for approximately a year. When the state authorities terminated their criminal investigation the United States Attorney took the matter to a grand jury and secured the two-count indictment. Brumfield claims a denial of his sixth amendment right to a speedy trial because of a delay between the escape and his indictment. To establish this claim, Brumfield must show, inter alia, actual prejudice, Barker v. Wingo, 407 U.S. 514 (1972); United States v. West, 568 F.2d 365 (5th Cir. 1978), such as unavailability of witnesses or their loss of memory from

the delay, United States v. Marion, 404 U. S. 307 (1971). Brumfield makes no such claim but refers to financial and emotional drain caused by the delay. Although regrettable, neither loss constitutes the prejudice component envisioned in Barker v. Wingo.

4. Illegal search.

Brumfield next contends that his fourth amendment rights were abrogated when, in execution of a search warrant after the escape, officers carefully combed "every inch" of his house. The search warrant lists with particularity clothing, keys to a specific vehicle, certain papers, fingerprints of Garvin Dale White, and "other instrumentalities" relevant to White's escape. While the final generic listing is somewhat inartful, we do not find the warrant fatally overbroad. Under the circumstances ex-

tant, the actions of the officers were not constitutionally impermissible. See Andresen v. Maryland, 427 U.S. 463 (1976).

5. Absence of Miranda warnings.

Brumfield suggests that his fifth amendment rights against self-incrimination were violated because he made involuntary statements at the jail without the benefits of the Miranda advisory. The claim lacks merit. Miranda applies only to interrogations in a custodial setting. Miranda v. Arizona, 384 U.S. 436 (1966). Upon close examination, Brumfield's challenge is not within the rubric of Miranda.

6. Insufficient evidence.

Brumfield maintains that his guilt was not proven beyond a reasonable doubt. We have held that this claim presents an issue for direct appeal but that it is

not cognizable in a SS 2255 setting. Sears v. United States, 265 F.2d 301 (5th Cir. 1959). "The guilt or innocence of the defendant is not in issue on a SS 2255 proceeding, but rather the validity and the fairness of the proceedings against him." United States v. Kastenbaum, 613 F.2d 86, 89 (5th Cir. 1980) (quoting 2 C. Wright, Federal Practice and Procedure, SS 593 at 592 (1969)). Circuit precedents vary. See, e.g., Cabell v. United States, 636 F.2d 246 (8th Cir. 1980); Chin v. United States, 622 F.2d 1090 (2d Cir. 1980), cert. denied, 450 U.S. 423 (1981); United States v. Vaughn, 797 F.2d 1485 (9th Cir. 1986); Bean v. United States, 679 F.2d 683 (7th Cir. 1982).

7. Court not impartial.

Finally, Brumfield charges that the trial judge was not impartial. His al-

legations include exposure to extensive pretrial publicity, friendship with the prosecutor, inappropriate involvement in the trial by questioning a witness, and taking notice of evidence presented in the Snyder case. The only claim bearing any merit is the last. Twice during the 41 pages of his findings of fact the trial judge referred to facts established in the prior Snyder trial. This was error. However, to obtain habeas relief Brumfield must show that the judge relied on the challenged facts and that this reliance caused actual prejudice. United States v. Frady, 456 U.S. 152 (1982). Disregarding the questioned facts, our review of the trial court's findings leads inexorably to the conclusion that the trial court had ample evidence upon which to convict. Accordingly, the error was harmless; it caused no meaningful

prejudice.

We find the other challenges, such as the prosecutor's failure to disclose a favorable article in the National Law Journal and to call a favorable witness, a mistaken presumption about Brumfield's experience as an attorney, an alleged gap in the chain of custody of notes taken from his auto, and the lack of direct evidence of his involvement in the escape, lack merit and require no further comment.

Section 2255 relief is available to redress transgressions which, if not redressed, would "result in a complete miscarriage of justice." United States v. Addonizio, 442 U.S. 178, 185 (1979); United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981). We find no such transgressions in this record.

AFFIRMED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JIMMIE ARNOLD BRUMFIELD, II

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

PETITION FOR REHEARING BY PANEL

ARAX T. BRUMFIELD

Attorney for Appellant

Jimmie Arnold Brumfield II

2921 Kirk Lane, Bossier City, LA

PETITION FOR REHEARING

There are two classifications of harmless error:

1. Non-constitutional harmless error.

2. Constitutional harmless error. Constitututional Harmless error is broken into two categories:

a. Harmless error

b. Non-harmless error

Judicial economy has been granted precedence over the rights guaranteed under the Constitution.

The standard seems to be that an individual under our nation of laws is not entitled to a trial free from error; nor under the recent unenlightened ruling is an individual entitled to a trial free from Constitutional error, when overwhelming evidence would show that the trial would come out the same if all con-

stitutionally inadmissible actions were excluded from the consideration at a new trial.

In the instant case, Judge Stagg, in his opinion held that:

"However, the other circumstances surround the escape both before and after and Mr. Brumfield's explanation of them are credible nor is Garvin Dale White's version of his escape believable. There are too many coincidences that came together to produce anything other than a planned escape. For example, if you wonder what I'm looking at, to keep tract of what happened, I had to make a calendar of October and every bit of information that came to pass I put down on the day that it came to pass to try to find out if Mr. Brumfield was guilty of aiding and abetting in this escape and every bit of the information, much of it cir-

cumstantial, had to fit or he is not guilty." Page 29 of Judge Stagg's opinion, page 90 of Appendix Appellant's Brief.

It is obvious from reading the Honorable Judge Tom Stagg's opinion that Donald Snyder and Garvin Dale White trial played a very important role in his list of information referred to above. Without the judicial notice of the Snyder or White trial, which bit would have fallen out and would credibility have been decided differently before a fair and impartial judge?

This case does not fall within the harmless constitutional error. Judge Stagg committed error as pointed out by the U. S. Court of Appeals. The Court of Appeals Judges were incorrect when they failed to recognize that this was non-harmless Constitutional error, which if

excluded from trial would destroy the government's case.

1. Any proof of a conspiracy would be negated. Judge Stagg had Costales on hand until he decided it more judicially expedient to rule that Defendant conspired with Snyder and take Judicial Notice of that previous decision.

2. The very fabric of the government's case falls apart when all constitutional error is corrected, as illustrated by, but not limited to:

a. Right to counsel - Where was counsel at the White and Snyder trial.

b. Failure to give advance warning of judicial notice.

c. Fair and impartial judge.

d. Right to cross examine witnesses, i.e., Philpot.

e. Innocence until proven

guilty.

The question to be put to you is whether the nation is a nation of laws which protect the rights of the individual or whether judicial economy now reigns supreme?

The error certainly has not been harmless to defendant.

Respectfuly submitted:

s/Arax T. Brumfield

Arax T. Brumfield

Attorney for

Jimmie A. Brumield

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has this day been mailed to the U. S. Attorney's Office for the Western District of Louisiana, Shreveport, Louisiana, 500 Fannin St., Shreveport, LA 71101.

January 15, 1987, in Bossier City, Louisiana.

_____

ARAX T. BRUMFIELD
Attorney for Defendant-
Appellant
2921 Kirk Lane
Bossier City, LA 71112

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 86-4624

UNITED STATES OF AMERICA,

Respondent-Appellee,

versus

JIMMIE ARNOLD BRUMFIELD, II,

Petitioner-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

ON PETITION FOR REHEARING

(February 2, 1987)

Before POLITZ, WILLIAMS, and JONES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for

rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT;

S/Henry A. Politz

United States District Judge

CLERK'S NOTE; SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA :

Appellee :

versus : APPEAL NO.

JIMMIE ARNOLD BRUMFIELD : 86-4624

II :

AMENDED

NOTICE OF APPEAL TO UNITED STATES SUPREME COURT

NOW INTO COURT, through undersigned counsel, comes and appears JIMMIE ARNOLD BRUMFIELD II, who with respect represents:

1.

Jimmie Arnold Brumfield II was convicted of Aiding in the Escape of a client, Garvin Dale White and Conspiracy to Aid in the Escape of Garvin Dale White, a Federal Prisoner in violation of 18 U.S.C. 371 and 18 U.S.C. 752(1) on the

14th of June 1982. He was sentenced on the 16th of July, 1982 to two years imprisonment and 5 years active probation. Jimmie A Brumfield filed a Notice of Appeal to the 5th Circuit Courrt of Appeals. He subsequently dismissed his appeal to the 5th Circuit Court of Appeals.

2.

Jimmie A. Brumfield filed a Petition for Writ of Habeas Corpus on the 17th of April, 1986.

3.

On the 6th day of August, 1986, the Honorable Judge Tom Stagg denied Petitioner's Petition for Writ of Habeas Corpus.

4.

A Notice of Appeal to the 5th Circuit Court of Appeals was timely filed by petitioner on the 7th of August, 1986.

5.

On the 6th day of January, 1987, the Fifth Circuit considered the Petition for Writ of Habeas Corpus, found that the Honorable Judge Tom Stagg erred in taking Judicial Notice of the Donald Snyder conviction, but upheld Petitioner's conviction stating that the error was harmless error.

6.

Petitioner filed a timely Petition for Rehearing to the Fifth Circuit Court of Appeals, and the 5th Circuit Court of Appeals denied his Petition for Rehearing on the 2nd day of February, 1987.

7.

Petitioner, Jimmie Arnold Brumfield II is hereby giving notice that he intends to file an appeal and/or Petition for Certiorari to the United States Supreme Court appealing the above and foregoing conviction and subsequent af-

firmation of his conviction by the 5th Circuit Court of Appeals and the 5th Circuit Court of Appeals denial of his Petition for Rehearing.

8.

Petitioner appeals his case under the various provisions of the United States Constitution. (non-exclusive list of particulars)

a. Right against unreasonable searches and seizures - 4th Amendment to the United States Constitution.

b. Due Process and Right Against Self-Incrimination 5th Amendment to the United States Constitution.

c. 6th Amendment to the United States Constitution i.e. Right to Speedy and public trial by a fair and impartial jury... to be confront witnesses against him, to have compulsory process for obtaining witnesses in his behalf and to

have assistance of counsel.

9.

Federal Rule of Evidence, No. 201 was violated.

10.

Appellants has jurisdiction as established by 28 U.S.C. 1254.

Respectfully submitted,

s/Arax T. Brumfield

ARAX T. BRUMFIELD
Attorney for Petitioner
2921 Kirk Lane
Bossier City, LA 71112
(318) 746-7045

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA

Appellee :

versus : APPEAL NO.

JIMMIE ARNOLD BRUMFIELD : 86-4624

II :

AFFIDAVIT OF CERTIFICATE OF SERVICE

STATE OF LOUISIANA

PARISH OF BOSSIER

BEFORE ME, the undersigned Notary Public, in and for Bossier Parish, Louisiana, personally came and appeared ARAX T. BRUMFIELD, attorney for Jimmie Arnold Brumfield, who after being duly sworn, did depose and state that:

1.

I am counsel of record for Jimmie Arnold Brumfield in the Proceeding entitled United States of America vs. Jimmie A. Brumfield, No. 86-4624, Court

of Appeals.

2.

I have hereby served Notice of Appeal in the above and foregoing Proceedings to the United States Court of Appeals to the following: Notice of appeal to the Solicitor General, Department of Justice, Washington D.C. 20530 and the Attorney General, Department of Justice, Washington D.C. 20530 were made by depositing said notice in the United States Mail by Airmail, Joe Cage, U. S. Attorney for the Western District of Louisiana, 3rd Floor Federal Building, 500 Fannin Street, Shreveport, Louisiana 71101.

3.

All parties required to be served were served.

4.

All service was made by depositing

three copies of the notice of appeal, in a correctly addressed postage paid envelop in the United States Mail. The notice was mailed to Joe Cage by Certified First Class Mail. The notice was mailed to the Solicitor General and the Attorney General by Certifield Mail.

s/Arax T. Brumfield
ARAX T. BRUMFIELD
Attorney for
Jimmie A. Brumfield

SWORN TO AND SUBSCRIBED to before me, Notary Public, this the 10th day of February, 1987.

s/J. Richard Foster
Notary Public
My commission is for
Life